

NOVEMBER 2012 - PROPOSED REGULATIONS – VIRGINIA SOIL AND WATER
CONSERVATION BOARD (Contains Exempt Action Language as well)

VIRGINIA STORMWATER MANAGEMENT PROGRAM (VSMP)
GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL
MUNICIPAL SEPARATE STORM SEWER SYSTEMS

Prepared pursuant to 4VAC50-60-520 - Amend and Reissue the General Permit for
Discharges of Stormwater from Small MS4s

Part I

Definitions, Purpose, and Applicability

4VAC50-60-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

"Act" means the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or its designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practice" or "BMP" means schedules of activities, prohibitions of practices, ~~including both structural and nonstructural practices~~, maintenance procedures, and other management practices, ~~including both structural and nonstructural practices~~, to prevent or reduce the pollution of surface waters and groundwater systems ~~from the impacts of land-disturbing activities~~.

"Board" means the Virginia Soil and Water Conservation Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject

37 to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC50-
38 90) adopted pursuant to the Chesapeake Bay Preservation Act.

39 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river
40 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay
41 and its small coastal basins, and York River Basin.

42 "Common plan of development or sale" means a contiguous area where separate and
43 distinct construction activities may be taking place at different times on different schedules.

44 "Comprehensive stormwater management plan" means a plan, which may be integrated
45 with other land use plans or regulations, that specifies how the water quality components,
46 quantity components, or both of stormwater are to be managed on the basis of an entire
47 watershed or a portion thereof. The plan may also provide for the remediation of erosion,
48 flooding, and water quality and quantity problems caused by prior development.

49 "Construction activity" means any clearing, grading or excavation associated with large
50 construction activity or associated with small construction activity.

51 "Contiguous zone" means the entire zone established by the United States under Article 24
52 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15,
53 1972).

54 "Continuous discharge" means a discharge which occurs without interruption throughout the
55 operating hours of the facility, except for infrequent shutdowns for maintenance, process
56 changes, or other similar activities.

57 "Control measure" means any BMP, stormwater facility, or other method used to minimize
58 the discharge of pollutants to state waters.

59 "Co-operator" means an operator of a state permit that is only responsible for state permit
60 conditions relating to the discharge for which it is the operator.

61 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
62 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution
63 Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217,
64 Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions
65 thereto.

66 "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations
67 published in the Code of Federal Regulations promulgated thereunder. For the purposes of this
68 chapter, it includes state program requirements.

69 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
70 24-hour period that reasonably represents the calendar day for purposes of sampling. For
71 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the
72 total mass of the pollutant discharged over the day. For pollutants with limitations expressed in
73 other units of measurement, the daily discharge is calculated as the average measurement of
74 the pollutant over the day.

75 "Department" means the Department of Conservation and Recreation.

76 "Development" means land disturbance and the resulting landform associated with the
77 construction of residential, commercial, industrial, institutional, recreation, transportation, or
78 utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural
79 purposes. The regulation of discharges from development, for purposes of these regulations,
80 does not include the exemptions found in 4VAC50-60-300.

81 "Direct discharge" means the discharge of a pollutant.

82 "Director" means the Director of the Department of Conservation and Recreation or his
83 designee.

84 "Discharge," when used without qualification, means the discharge of a pollutant.
85 "Discharge of a pollutant" means:
86 1. Any addition of any pollutant or combination of pollutants to state waters from any
87 point source; or
88 2. Any addition of any pollutant or combination of pollutants to the waters of the
89 contiguous zone or the ocean from any point source other than a vessel or other floating
90 craft which is being used as a means of transportation.
91 This definition includes additions of pollutants into surface waters from: surface runoff that is
92 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned
93 by a state, municipality, or other person that do not lead to a treatment works; and discharges
94 through pipes, sewers, or other conveyances, leading into privately owned treatment works.
95 This term does not include an addition of pollutants by any indirect discharger.
96 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
97 equivalent form developed by the ~~operator~~permittee and approved by ~~the~~the Board~~-board~~, for
98 the reporting of self-monitoring results by ~~operator~~permittees.
99 "Draft state permit" means a document indicating ~~the board~~the Board's tentative decision to
100 issue or deny, modify, revoke and reissue, terminate, or reissue a state permit. A notice of intent
101 to terminate a state permit, and a notice of intent to deny a state permit are types of draft state
102 permits. A denial of a request for modification, revocation and reissuance, or termination is not a
103 draft state permit. A proposed state permit is not a draft state permit.
104 "Drainage area" means a land area, water area, or both from which runoff flows to a
105 common point.
106 "Effluent limitation" means any restriction imposed by ~~the board~~the Board on quantities,
107 discharge rates, and concentrations of pollutants which are discharged from point sources into
108 surface waters, the waters of the contiguous zone, or the ocean.
109 "Effluent limitations guidelines" means a regulation published by the administrator under §
110 304(b) of the CWA to adopt or revise effluent limitations.
111 "Environmental Protection Agency" or "EPA" means the United States Environmental
112 Protection Agency.
113 "Existing state permit" means for the purposes of this chapter a state permit issued by the
114 board and currently held by a state permit applicant.
115 "Existing source" means any source that is not a new source or a new discharger.
116 "Facilities or equipment" means buildings, structures, process or production equipment or
117 machinery that form a permanent part of a new source and that will be used in its operation, if
118 these facilities or equipment are of such value as to represent a substantial commitment to
119 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
120 design studies regarding the new source or water pollution treatment for the new source.
121 "Facility or activity" means any point source or treatment works treating domestic sewage or
122 any other facility or activity (including land or appurtenances thereto) that is subject to regulation
123 under the VSMP.
124 "Flood fringe" means the portion of the floodplain outside the floodway that is usually
125 covered with water from the 100-year flood or storm event. This includes, but is not limited to,
126 the flood or floodway fringe designated by the Federal Emergency Management Agency.
127 "Flooding" means a volume of water that is too great to be confined within the banks or walls
128 of the stream, water body or conveyance system and that overflows onto adjacent lands,
129 thereby causing or threatening damage.

130 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
131 susceptible to being inundated by water normally associated with the 100-year flood or storm
132 event. This includes, but is not limited to, the floodplain designated by the Federal Emergency
133 Management Agency.

134 "Flood-prone area" means the component of a natural or restored stormwater conveyance
135 system that is outside the main channel. Flood-prone areas may include, but are not limited to,
136 the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent
137 to the main channel.

138 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
139 usually associated with flowing water, that must be reserved in order to discharge the 100-year
140 flood or storm event without cumulatively increasing the water surface elevation more than one
141 foot. This includes, but is not limited to, the floodway designated by the Federal Emergency
142 Management Agency.

143 "General permit" means a state permit authorizing a category of discharges under the CWA
144 and the Act within a geographical area of the Commonwealth of Virginia.

145 "Hazardous substance" means any substance designated under the Code of Virginia or 40
146 CFR Part 116 (2000) pursuant to § 311 of the CWA.

147 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
148 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically
149 identified as another order.

150 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
151 composed entirely of stormwater, except discharges pursuant to a VPDES or state permit (other
152 than the state permit for discharges from the municipal separate storm sewer), discharges
153 resulting from fire fighting activities, and discharges identified by and in compliance with
154 4VAC50-60-1220 C-2 4VAC50-60-400 D 2 c (3).

155 "Impervious cover" means a surface composed of material that significantly impedes or
156 prevents natural infiltration of water into soil.

157 "Incorporated place" means a city, town, township, or village that is incorporated under the
158 Code of Virginia.

159 "Indian country" means (i) all land within the limits of any Indian reservation under the
160 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
161 including rights-of-way running through the reservation; (ii) all dependent Indian communities
162 with the borders of the United States whether within the originally or subsequently acquired
163 territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,
164 the Indian titles to which have not been extinguished, including rights-of-way running through
165 the same.

166 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
167 owned treatment works (POTW)."

168 "Inspection" means an on-site review of the project's compliance with the permit or the
169 ~~general state permit~~, the VSMP, and any applicable design criteria, or an on-site review to
170 obtain information or conduct surveys or investigations necessary in the implementation or
171 enforcement of the Act and this chapter.

172 "Interstate agency" means an agency of two or more states established by or under an
173 agreement or compact approved by Congress, or any other agency of two or more states
174 having substantial powers or duties pertaining to the control of pollution as determined and
175 approved by the administrator under the CWA and regulations.

176 "Karst area" means any land area predominantly underlain at the surface or shallow
177 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
178 karst features.

179 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
180 other such landscape features found in karst areas.

181 "Land disturbance" or "land-disturbing activity" means a man-made change to the land
182 surface that potentially changes its runoff characteristics including clearing, grading, or
183 excavation, except that the term shall not include those exemptions specific in § 10.1-603.8.

184 "Large construction activity" means construction activity including clearing, grading and
185 excavation, except operations that result in the disturbance of less than five acres of total land
186 area. Large construction activity also includes the disturbance of less than five acres of total
187 land area that is a part of a larger common plan of development or sale if the larger common
188 plan will ultimately disturb five acres or more. Large construction activity does not include
189 routine maintenance that is performed to maintain the original line and grade, hydraulic
190 capacity, or original purpose of the facility.

191 "Large municipal separate storm sewer system" means all municipal separate storm sewers
192 that are either:

193 1. Located in an incorporated place with a population of 250,000 or more as determined
194 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F
195 (2000));

196 2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except
197 municipal separate storm sewers that are located in the incorporated places, townships
198 or towns within such counties;

199 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
200 of this definition and that are designated by ~~the board~~ the Board as part of the large or
201 medium municipal separate storm sewer system due to the interrelationship between the
202 discharges of the designated storm sewer and the discharges from municipal separate
203 storm sewers described under subdivision 1 or 2 of this definition. In making this
204 determination ~~the board~~ the Board may consider the following factors:

- 205 a. Physical interconnections between the municipal separate storm sewers;
206 b. The location of discharges from the designated municipal separate storm sewer
207 relative to discharges from municipal separate storm sewers described in subdivision
208 1 of this definition;
209 c. The quantity and nature of pollutants discharged to surface waters;
210 d. The nature of the receiving surface waters; and
211 e. Other relevant factors.

212 4. ~~The board~~ The Board may, upon petition, designate as a large municipal separate
213 storm sewer system, municipal separate storm sewers located within the boundaries of a
214 region defined by a stormwater management regional authority based on a jurisdictional,
215 watershed, or other appropriate basis that includes one or more of the systems
216 described in this definition.

217 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
218 management facilities required at the time of approval.

219 "Linear development project" means a land-disturbing activity that is linear in nature such as,
220 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
221 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other
222 related structures of a railroad company; (iii) highway construction projects; (iv) construction of

223 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
 224 subdivision roads or streets shall not be considered linear development projects.

225 "Locality" means a county, city, or town.

226 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater
 227 conveyance system. This may include high water, ponding, or standing water from stormwater
 228 runoff, which is likely to cause property damage or unsafe conditions.

229 "Main channel" means the portion of the stormwater conveyance system that contains the
 230 base flow and small frequent storm events.

231 "Major facility" means any facility or activity classified as such by the regional administrator
 232 in conjunction with the boardthe Board.

233 "Major modification" means, for the purposes of this chapter, the modification or amendment
 234 of an existing state permit before its expiration that is not a minor modification as defined in this
 235 regulation.

236 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal
 237 separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36
 238 inches or more or its equivalent (discharge from a single conveyance other than circular pipe
 239 which is associated with a drainage area of more than 50 acres); or for municipal separate
 240 storm sewers that receive stormwater from lands zoned for industrial activity (based on
 241 comprehensive zoning plans or the equivalent), with an outfall that discharges from a single
 242 pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other
 243 than a circular pipe associated with a drainage area of two acres or more).

244 "Manmade" means constructed by man.

245 "Maximum daily discharge limitation" means the highest allowable daily discharge.

246 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
 247 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in
 248 part, by selecting and implementing effective structural and nonstructural best management
 249 practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best
 250 management practices (BMPs). MEP is an iterative standard, which evolves over time as urban
 251 runoff management knowledge increases. As such, the operatorpermittee's MS4 program must
 252 continually be assessed and modified to incorporate improved programs, control measures,
 253 BMPs, etc., to attain compliance with water quality standards.

254 "Medium municipal separate storm sewer system" means all municipal separate storm
 255 sewers that are either:

- 256 1. Located in an incorporated place with a population of 100,000 or more but less than
 257 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
 258 Part 122 Appendix G (2000));
- 259 2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal
 260 separate storm sewers that are located in the incorporated places, townships or towns
 261 within such counties;
- 262 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 263 of this definition and that are designated by the boardthe Board as part of the large or
 264 medium municipal separate storm sewer system due to the interrelationship between the
 265 discharges of the designated storm sewer and the discharges from municipal separate
 266 storm sewers described under subdivision 1 or 2 of this definition. In making this
 267 determination the boardthe Board may consider the following factors:

- 268 a. Physical interconnections between the municipal separate storm sewers;

b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;

c. The quantity and nature of pollutants discharged to surface waters;

d. The nature of the receiving surface waters; or

e. Other relevant factors.

4. ~~The board~~The Board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4s" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

317 "National Pollutant Discharge Elimination System" or "NPDES" means the national program
318 for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state
319 permits, and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and
320 405 of the CWA. The term includes an approved program.

321 "Natural channel design concepts" means the utilization of engineering analysis based on
322 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance
323 system for the purpose of creating or recreating a stream that conveys its bankfull storm event
324 within its banks and allows larger flows to access its floodplain.

325 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
326 It usually maintains a continuous or seasonal flow during the year and is characterized as being
327 irregular in cross-section with a meandering course. Constructed channels such as drainage
328 ditches or swales shall not be considered natural streams; however, channels designed utilizing
329 natural channel design concepts may be considered natural streams.

330 "New discharger" means any building, structure, facility, or installation:

- 331 1. From which there is or may be a discharge of pollutants;
- 332 2. That did not commence the discharge of pollutants at a particular site prior to August
333 13, 1979;
- 334 3. Which is not a new source; and
- 335 4. Which has never received a finally effective state or VSMP permit for discharges at
336 that site.

337 This definition includes an indirect discharger that commences discharging into surface
338 waters after August 13, 1979. It also includes any existing mobile point source (other than an
339 offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental
340 drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant,
341 that begins discharging at a site for which it does not have a VPDES industrial stormwater or
342 state permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal
343 mobile oil and gas developmental drilling rig that commences the discharge of pollutants after
344 August 13, 1979.

345 "New permit" means, for the purposes of this chapter, a state permit issued by ~~the board~~the
346 Board authority to a state permit applicant that does not currently hold and has never held a
347 state permit of that type, for that activity, at that location.

348 "New source," means any building, structure, facility, or installation from which there is or
349 may be a discharge of pollutants, the construction of which commenced:

- 350 1. After promulgation of standards of performance under § 306 of the CWA that are
351 applicable to such source; or
- 352 2. After proposal of standards of performance in accordance with § 306 of the CWA that
353 are applicable to such source, but only if the standards are promulgated in accordance
354 with § 306 of the CWA within 120 days of their proposal.

355 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
356 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
357 washed from the land surface in a diffuse manner by stormwater runoff.

358 "Operator" means the owner or operator of any facility or activity subject to the Act and this
359 chapter. In the context of stormwater associated with a large or small construction activity,
360 operator means any person or authority associated with a construction project that meets either
361 of the following two criteria: (i) the person has direct operational control over construction plans
362 and specifications, including the ability to make modifications to those plans and specifications
363 or (ii) the person has day-to-day operational control of those activities at a project that are

364 necessary to ensure compliance with a stormwater pollution prevention plan for the site or other
365 state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a
366 site to carry out activities required by the stormwater pollution prevention plan or comply with
367 other permit conditions). In the context of stormwater discharges from Municipal Separate Storm
368 Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

369 "Outfall" means, when used in reference to municipal separate storm sewers, a point source
370 at the point where a municipal separate storm sewer discharges to surface waters and does not
371 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels
372 or other conveyances which connect segments of the same stream or other surface waters and
373 are used to convey surface waters.

374 "Overburden" means any material of any nature, consolidated or unconsolidated, that
375 overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that
376 are not disturbed by mining operations.

377 "Owner" means the Commonwealth or any of its political subdivisions including, but not
378 limited to, sanitation district commissions and authorities, and any public or private institution,
379 corporation, association, firm or company organized or existing under the laws of this or any
380 other state or country, or any officer or agency of the United States, or any person or group of
381 persons acting individually or as a group that owns, operates, charters, rents, or otherwise
382 exercises control over or is responsible for any actual or potential discharge of sewage,
383 industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that
384 has the capability to alter the physical, chemical, or biological properties of state waters in
385 contravention of § 62.1-44.5 of the Code of Virginia, the Act and this chapter.

386 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at
387 a particular location.

388 "Percent impervious" means the impervious area within the site divided by the area of the
389 site multiplied by 100.

390 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity
391 issued by the VSMP authority for the initiation of a land-disturbing activity.

392 "Permittee" means the person to which the state permit or VSMP authority permit is issued,
393 including any owner or operator whose construction site is covered under a state construction
394 general permit.

395 "Person" means any individual, corporation, partnership, association, state, municipality,
396 commission, or political subdivision of a state, governmental body, including a federal, state, or
397 local entity as applicable, any interstate body or any other legal entity.

398 "Point of discharge" means a location at which concentrated stormwater runoff is released.

399 "Point source" means any discernible, confined, and discrete conveyance including, but not
400 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
401 concentrated animal feeding operation, landfill leachate collection system, vessel, or other
402 floating craft from which pollutants are or may be discharged. This term does not include return
403 flows from irrigated agriculture or agricultural stormwater runoff.

404 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
405 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
406 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
407 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal,
408 and agricultural waste discharged into water. It does not mean:

- 409 1. Sewage from vessels; or
410 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
411 gas, or water derived in association with oil and gas production and disposed of in a well

if the well used either to facilitate production or for disposal purposes is approved by the boardthe Board and if the boardthe Board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"Pollutant discharge" means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

"Prior developed lands" means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Proposed state permit" means a state permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) that is sent to EPA for review before final issuance. A proposed state permit is not a draft state permit.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operatorpermittee that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities, this requires the use of a

461 | person who holds a certificate of competency from the ~~board~~ the Board in the area of project
462 inspection for ESC and projection inspection for SWM or combined administrator for ESC and
463 combined administrator for SWM as defined in 4VAC50-50-10 or a combination of ESC and
464 SWM qualifications in these two areas.

465 "Recommencing discharger" means a source that recommences discharge after terminating
466 operations.

467 "Regional administrator" means the Regional Administrator of Region III of the
468 Environmental Protection Agency or the authorized representative of the regional administrator.

469 "Revoked state permit" means, for the purposes of this chapter, an existing state permit that
470 is terminated by the ~~board~~ the Board before its expiration.

471 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
472 runoff.

473 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
474 the land surface or through conveyances to one or more waterways.

475 "Runoff characteristics" include maximum velocity, peak flow rate, volume, and flow
476 duration.

477 "Runoff volume" means the volume of water that runs off the site from a prescribed design
478 storm.

479 "Schedule of compliance" means a schedule of remedial measures included in a state
480 permit, including an enforceable sequence of interim requirements (for example, actions,
481 operations, or milestone events) leading to compliance with the Act, the CWA and regulations.

482 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

483 "Severe property damage" means substantial physical damage to property, damage to the
484 treatment facilities that causes them to become inoperable, or substantial and permanent loss of
485 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe
486 property damage does not mean economic loss caused by delays in production.

487 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as
488 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw
489 materials used in food processing or production; hazardous substances designated under §
490 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report
491 pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste
492 products such as ashes, slag and sludge that have the potential to be released with stormwater
493 discharges.

494 "Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term
495 county includes incorporated towns which are part of the county.

496 "Site" means the land or water area where any facility or land-disturbing activity is physically
497 located or conducted, including adjacent land used or preserved in connection with the facility or
498 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be
499 considered part of a site.

500 "Site hydrology" means the movement of water on, across, through and off the site as
501 determined by parameters including, but not limited to, soil types, soil permeability, vegetative
502 cover, seasonal water tables, slopes, land cover, and impervious cover.

503 "Small construction activity" means:

504 1. Construction activities including clearing, grading, and excavating that results in land
505 disturbance of equal to or greater than one acre, and less than five acres. Small
506 construction activity also includes the disturbance of less than one acre of total land area
507 that is part of a larger common plan of development or sale if the larger common plan

will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The ~~board~~The Board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a an approved "total maximum daily load" (TMDL) ~~approved or established by EPA~~ that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The ~~operator~~permittee must certify to the ~~board~~the Board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either ~~the board~~the Board or the EPA ~~R~~regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, modifications to the forms, approved by the administrator and ~~the board~~the Board for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA ~~R~~Regional Administrator and the state that coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issues by the ~~board~~the Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by ~~the board~~the Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and this chapter. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit or a proposed state permit.

557 "State project" means any land development project that is undertaken by any state agency,
558 board, commission, authority or any branch of state government, including state-supported
559 institutions of higher learning.

560 "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code
561 of Virginia.

562 "State waters" means all water, on the surface and under the ground, wholly or partially
563 within or bordering the Commonwealth or within its jurisdiction, including wetlands.

564 "Stormwater" means precipitation that is discharged across the land surface or through
565 conveyances to one or more waterways and that may include stormwater runoff, snow melt
566 runoff, and surface runoff and drainage.

567 "Stormwater conveyance system" means a combination of drainage components that are
568 used to convey stormwater discharge, either within or downstream of the land-disturbing
569 activity. This includes:

570 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
571 other stormwater conveyance system constructed by man except for restored
572 stormwater conveyance systems;

573 2. "Natural stormwater conveyance system" means the main channel of a natural stream
574 and the flood-prone area adjacent to the main channel; or

575 3. "Restored stormwater conveyance system" means a stormwater conveyance system
576 that has been designed and constructed using natural channel design concepts.
577 Restored stormwater conveyance systems include the main channel and the flood-prone
578 area adjacent to the main channel.

579 "Stormwater discharge associated with construction activity" means a discharge of
580 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
581 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
582 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
583 construction process (e.g., concrete or asphalt batch plants) are located.

584 "Stormwater discharge associated with large construction activity" means the discharge of
585 stormwater from large construction activities.

586 "Stormwater discharge associated with small construction activity" means the discharge of
587 stormwater from small construction activities.

588 "Stormwater management facility" means a control measure that controls stormwater runoff
589 and changes the characteristics of that runoff including, but not limited to, the quantity and
590 quality, the period of release or the velocity of flow.

591 "Stormwater management plan" means a document(s) containing material for describing
592 methods for complying with the requirements of the VSMP or this chapter.

593 ""Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in
594 accordance with good engineering practices and that identifies potential sources of pollutants
595 that may reasonably be expected to affect the quality of stormwater discharges from the
596 construction site. In addition the document A SWPPP required under a VSMP for construction
597 activities shall identify and require the implementation of control measures, and shall include,
598 but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion
599 and sediment control plan, an approved stormwater management plan, and a pollution
600 prevention plan.

601 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

602 "Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
- a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Total maximum daily load Action Plan" or "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator/permittee will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans are may be implemented over more than one state permit cycle.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

"Turf and landscape nutrient management" means the management of major plant nutrients (nitrogen, phosphorus, and potassium) on expected turf and landscape plants for the protection of water quality by minimizing the export and loss of nutrients to surface and ground water.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator/permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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Comment [KWA1]: Comment: Suggested additional definition to include based on definition derived by Chesapeake Bay Program Urban Nutrient Management expert panel

650 "Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under
651 40 CFR Part 125 (2000), or in the applicable federal effluent limitations guidelines that allows
652 modification to or waiver of the generally applicable effluent limitation requirements or time
653 deadlines of the CWA. This includes provisions that allow the establishment of alternative
654 limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i),
655 or § 316(a) of the CWA.

656 "Virginia Erosion and Sediment Control Program" or "VЕСP" means a program approved
657 by the ~~board~~ the Board that has been established by a VЕСP authority for the effective control
658 of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing
659 activity to prevent the unreasonable degradation of properties, stream channels, waters, and
660 other natural resources and shall include such items where applicable as local ordinances,
661 rules, permit requirements, annual standards and specifications, policies and guidelines,
662 technical materials, and requirements for plan review, inspection, enforcement where authorized
663 in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent
664 with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

665 "Virginia Erosion and Sediment Control Program authority" or "VЕСP authority" means an
666 authority approved by the ~~board~~ the Board to operate a Virginia Erosion and Sediment Control
667 Program. An authority may include a state entity, including the department; a federal entity; a
668 district, county, city, or town; or for linear projects subject to annual standards and
669 specifications, electric, natural gas and telephone utility companies, interstate and intrastate
670 natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-
671 5102.

672 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit"
673 means a document issued by the State Water Control Board pursuant to the State Water
674 Control Law authorizing, under prescribed conditions, the potential or actual discharge of
675 pollutants from a point source to surface waters and the use or disposal of sewage sludge.

676 "Virginia Stormwater Management Act" means Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6
677 of Title 10.1 of the Code of Virginia.

678 "Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed
679 design standards and specifications for control measures that may be used in Virginia to comply
680 with the requirements of the Virginia Stormwater Management Act and associated regulations
681 and that is jointly created by the department and the Virginia Water Resources Research Center
682 subject to advice to the director from a permanent stakeholder advisory committee.

683 "Virginia Stormwater Management Handbook" means a collection of pertinent information
684 that provides general guidance for compliance with the Act and associated regulations and is
685 developed by the department with advice from a stakeholder advisory committee.

686 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the
687 ~~board~~ the Board after September 13, 2011, that has been established by a VSMP authority to
688 manage the quality and quantity of runoff resulting from land-disturbing activities and shall
689 include such items as local ordinances, rules, permit requirements, annual standards and
690 specifications, policies and guidelines, technical materials, and requirements for plan review,
691 inspection, enforcement, where authorized in the Act and associated regulations, and evaluation
692 consistent with the requirements of the SWM Act and associated regulations.

693 "Virginia Stormwater Management Program authority" or "VSMP authority" means an
694 authority approved by the ~~board~~ the Board after September 13, 2011, to operate a Virginia
695 Stormwater Management Program or, until such approval is given, the department. An authority
696 may include a locality; state entity, including the department; federal entity; or, for linear projects
697 subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5,
698 electric, natural gas, and telephone utility companies, interstate and intrastate natural gas

699 pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Prior to
700 approval, ~~the board~~the Board must find that the ordinances adopted by the locality's VSMP
701 authority are consistent with the Act and this chapter including the General Permit for
702 Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.).

703

704 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface
705 water's loading or assimilative capacity allocated to one of its existing or future point sources of
706 pollution. WLAs are a type of water quality-based effluent limitation.

707 "Water quality standards" or "WQS" means provisions of state or federal law that consist of
708 a designated use or uses for the waters of the Commonwealth and water quality criteria for such
709 waters based on such uses. Water quality standards are to protect the public health or welfare,
710 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-
711 44.2 et seq. of the Code of Virginia), the Act (§ 10.1-603.1 et seq. of the Code of Virginia), and
712 the CWA (33 USC § 1251 et seq.).

713 "Watershed" means a defined land area drained by a river or stream, karst system, or
714 system of connecting rivers or streams such that all surface water within the area flows through
715 a single outlet. In karst areas, the karst feature to which the water drains may be considered the
716 single outlet for the watershed.

717 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at
718 a frequency and duration sufficient to support, and that under normal circumstances do support,
719 a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands
720 generally include swamps, marshes, bogs, and similar areas.

721 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by
722 a toxicity test.

723 Part XV

724 General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer 725 Systems

726

727 4VAC50-60-1200. Definitions.

728 The words and terms used in this part shall have the meanings defined in the Act and this
729 chapter unless the context clearly indicates otherwise, except that for the purposes of this part:

730 "Date brought on line" means the date when the ~~operator~~permittee determines that a new
731 stormwater management facility is properly functioning to meet its designed pollutant load
732 reduction.

733 "MS4 Program Plan" means the completed registration statement and all approved
734 additions, changes and modifications detailing the comprehensive program implemented by the
735 ~~operator~~permittee under this state permit to reduce the pollutants in the stormwater discharged
736 from its municipal separate storm sewer system (MS4) that has been submitted, reviewed and
737 accepted by the department.

738 "Municipality" means all entities included in the definition of "municipality" found at 4VAC50-
739 60-10 and federal facilities that operate a small municipal separate storm sewer system.

740 "Operator" means the MS4 operator that has been issued coverage under the General
741 Permit for Discharges of Stormwater from small municipal separate storm sewer systems.

742 "Physically interconnected" means that a MS4 ~~directly discharges to a second MS4~~ one
743 MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the
744 second system.

Comment [lgk2]: Comment: Suggestion to only include one definitions section, and ensure that each term is only defined once. Current version has terms defined differently in 2 sections. If need to keep in because there are numerous definition chapters, in the regulations. Please clarify this in the headings.

Comment [KWA3]: Comment: Redundant with previous "Municipality" definition. Cut this one, as definition is different and does not match federal definition. Federal facilities are also covered by the small MS4 definition.

"Public" as described in Federal Register, Volume 64, No. 235, page 68,750 on December 8, 1999, and as used in the context of this permit means the resident and employee population within the boundary of the drainage area of the regulated small MS4. ~~the fence line of the facility.~~ This concept shall also apply to nontraditional MS4 operators, such as state and federal entities and local school districts, that utilize this statement as guidance when determining their applicable "public" for compliance with this permit.

4VAC50-60-1210. Purpose; delegation of authority; effective date of this state permit.

A. This general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (~~regulated small MS4s~~) (small MS4s) to surface waters of the Commonwealth of Virginia.

1. Small MS4s are regulated in the Commonwealth. ~~Unless they the small MS4 apply for qualifies for a waiver under subdivision 3 of this subsection, and are determined to be qualified for such waiver by the Department, operators are regulated if they operate a small MS4. This section includes but is not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation, and so long as one of the following applies:~~

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the U.S. Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by ~~the board~~ the Board, including where the designation is pursuant to 40 CFR Section-Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

2. A small MS4 may be the subject of a petition ~~to the Board~~ pursuant to 4VAC50-60-380 D ~~to the board~~ to require a state permit for a small MS4's ~~their~~ discharge of stormwater. If ~~the board~~ the Board determines that a small MS4 needs a state permit and the ~~operator~~ permittee applies for coverage under this general permit, the ~~operator~~ permittee is required to comply with this permit in its entirety and the requirements of Part XV (4VAC50-60-1180 et seq.) of this chapter.

3. ~~The board~~ The Board may waive the requirements otherwise applicable to a regulated small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the ~~operator~~ permittee may subsequently be required to seek coverage under a state permit in accordance with 4VAC50-60-400 C if circumstances change. (See also 40 CFR ~~Part~~ § 123.35 (b) (2001))

4. ~~The board~~ Pursuant to 40 CFR § 122.32(d), the Board may waive state permit coverage if the regulated small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the state stormwater program; and

b. Pollutants are discharged that have been identified as a cause of impairment of any water body to which the regulated small MS4 discharges but stormwater controls are not needed based on wasteload allocations that are part of a ~~State Water Control Board established and EPA an~~ approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. ~~The board~~ Pursuant to 40 C.F.R. 122.32(d), the Board may waive state permit coverage if the regulated small MS4 serves a population under 10,000 and meets all of the following criteria:

Comment [KWA4]: Comment: Given that VDOT is a non-traditional MS4 by definition, see e.g., EPA, *MS4 Program Evaluation Guidance* (Jan. 2007) at 8 and recent EPA regional inspections of transportation facilities which identified that VDOT (along with other state transportation authorities) conducts significantly different operations than those more traditional municipal-type permittees for which the Phase II general permit was written, DCR should issue a separate, individual state-wide permit to VDOT for MS4 coverage. Permitting VDOT under its own individual permit would allow permit conditions to be tailored to the day-to-day operations unique to the transportation sector, while at the same time ensuring that the permittee has the ability to comply with the terms of the permit.

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a. The State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the regulated small MS4;

b. For all such waters, ~~the board~~The Board has determined that stormwater controls are not needed based on wasteload allocations that are part of a ~~State Water Control Board established and EPA~~ an approved TMDL that addresses the pollutants of concern; or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the regulated small MS4; and

d. ~~The board~~The Board has determined that future discharges from the regulated small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on ~~July 9, 2008~~ July 1, 2013, and will expire five years from the effective date consistent with 4VAC50-60-330.

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4VAC50-60-1220. Authorization to discharge.

A. Any operator governed by this general permit is hereby authorized to discharge stormwater from the regulated small MS4 to surface waters of the Commonwealth of Virginia provided that: (i) the operator files a registration statement pursuant to 4VAC50-60-1230; (ii) ~~the operator and receives acceptance thereof of the registration statement of 4VAC50-60-1230 by from the department;~~ (iii) the operator timely pays and files the permit fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter; and (iv) ~~provided that the operator has~~ shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The operator ~~is~~ shall not be authorized by this general permit to discharge to state surface waters specifically named in other State Water Control Board or board regulations or policies that prohibit such discharges.

C. Non-stormwater discharges or flows into the regulated small MS4 are authorized by this state permit and do not need to be addressed in the MS4 Program required under 4VAC50-60-1240, Section II B 3, if any of the following apply:

1. The non-stormwater discharges or flows are covered by a separate individual or general VPDES or state permit for nonstormwater discharges;

2. The individual non-stormwater discharges or flows have been identified in writing by the Department of Environmental Quality as *de minimis* discharges that are not significant sources of pollutants to state surface waters and do not require a VPDES permit;

3. ~~The MS4's n~~Non-stormwater discharges or flows in the following categories identified at 4VAC50-60-400 D 2 c (3) that have not been identified by the operator/permittee, State Water Control Board, or by the boardThe Board as significant contributors of pollutants to the regulated small MS4: ~~water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing,~~

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flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities; or

4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator/permittee shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator/permittee nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

D. In the event the operator/permittee is unable to meet certain conditions of this permit due to circumstances beyond the operator/permittee's control, the operator/permittee shall submit a written explanation of the circumstances that prevented state permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator/permittee are limited to those situations based on: may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator/permittee (operator error is not a condition beyond the control of the operator/permittee). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The board/The Board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

D. E. Discharges that are excluded from requiring obtaining a state permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this state permit.

E. F. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of a regulated small MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES industrial permit. Upon termination of VPDES industrial permit coverage, discharges from previously VPDES-authorized outfalls shall meet the conditions of this state permit provided it has been determined by the board/the Board that an individual MS4 permit is not required.

F. G. Stormwater discharges from specific MS4 outfalls operator activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the VPDES industrial stormwater permitting program and 40 CFR § 122.26(g) shall obtain coverage under this VSMP general permit comply with this state this permit unless coverage under a separate VDPES permit is obtained. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

G. H. Receipt of this state general permit does not relieve any operator/permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

4VAC50-60-1230. State Permit application (registration statement).

A. Deadline for submitting a registration statement.

1. Operators of regulated small MS4s, designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board/the Board grants a later date.

2. In order to continue uninterrupted coverage under this the general permit, operator/permittees of regulated small MS4s shall submit a new registration statement to

Comment [lgk5]: Comment: Recommend for this to go in Bypass/Upset section (or the very next paragraph) as a defense, not a basis for not needing a permit.

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Comment [lgk6]: Comment: The MS4 GP is also a permit under the NPDES program.

the Department at least 180 days before the expiration date of the existing state Phase II MS4 General Permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

Comment [KWA7]: Comment: 180 days is the deadline in CFR 122.21(d)

B. Registration statement.

The registration statement shall include the following information for the MS4:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;
2. The name, type (*i.e.*, city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other), and address of the operator of the regulated small MS4;
3. The Hydrologic Unit Code(s) as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset (available online at http://www.dcr.virginia.gov/soil_water/hu.shtml) for streams currently receiving discharges or that have potential to receive discharges from the regulated small MS4;
4. The estimated drainage area, in acres, served by the regulated small MS4 directly discharging to any impaired receiving surface waters listed in the 2006 2012 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area;
5. A listing of any TMDL wasteloads allocated to the regulated small MS4. This information may be found at: <http://www.deq.state.va.us/tmdl/develop.html>;
6. The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges;
7. For operator permittees that had coverage under the previous VSMP Phase II MS4 General Permit, a copy of the currently implemented MS4 Program Plan. The operator permittee shall continue to implement this plan and any updates as required by this state permit in accordance with Table 1 herein 4VAC50-60-1240.
7. A copy of the MS4 Program Plan that includes 8. For operators applying for initial coverage designated under 4VAC50-60-1210 A, a schedule of development of an MS4 Program Plan that complies with Table 1 herein 4VAC50-60-1240 that includes the following:
 - a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 4VAC50-60-1240, Section II B, that includes:
 - (1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and any other documents necessary for best management practice implementation or upon which the operator expects to rely for such implementation; and
 - (2) The individuals, departments, divisions, or units responsible for implementing the best management practices;
 - b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;
 - c. The implementation schedule for BMPs, including any interim milestone(s) for the implementation of a proposed new best management practice; and
 - d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;

Comment [KWA8]: Comment: To clarify this is referring to proposed, not current, regs

Comment [lgt9]: Comment: To clarify that Table 1 is in proposed regs, not current regs

8- 9. A list of all existing signed agreements between the operator~~permittee~~ and any applicable third parties where the operator~~permittee~~ has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

9- 10. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 4VAC50-60-370;

10- 11. The name, position title, address, telephone number and email address of any duly authorized representative as defined in 4VAC50-60-370; and

11- 12. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed by the principal executive officer or ranking elected official in accordance with 4VAC50-60-370.

D. An operator~~permittee~~ may file its own registration statement, or the operator~~permittee~~ and other operators of regulated small MS4s may jointly submit a registration statement. If any responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator~~permittee~~ will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the regulated small MS4.

E. Where to submit. The registration statement shall be submitted to:

Department of Conservation and Recreation
Division of Soil and Water Conservation
Stormwater Permitting
203 Governor Street, Suite 206
Richmond, VA 23219

Department of Conservation and Recreation
Stormwater Permitting
600 East Main Street
4th Floor
Richmond, VA 23219

4VAC50-60-1240. General permit.

Any operator~~permittee~~ whose registration statement is accepted by the department will receive coverage under the following state permit and shall comply with the requirements therein and be subject to all applicable requirements of the Virginia Stormwater Management Act (Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

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General Permit No.: VAR04

Effective Date: ~~July 9, 2008~~ July 1, 2013

Expiration Date: ~~July 8, 2013~~ June 30, 2018

GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL
SEPARATE STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT
PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, this state permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page; Section I—Discharge Authorization and Special Conditions; Section II—MS4 Program; and Section III—Conditions Applicable To All State Permits, as set forth herein. The operator/permittee shall utilize all legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to, through and from the MS4. This legal authority may be a combination of statute, ordinance, permit, specific contract language, order or interjurisdictional agreements.

For operator/permittees that ~~who~~ have previously held MS4 state permit coverage, the operator/permittee shall update the MS4 Program Plan in accordance with the following schedule in Table 1 herein. Until such time as the required updates are completed and implemented, the operator/permittee shall continue to implement the MS4 Program consistent with the MS4 Program Plan submitted with the registration statement.

For operators of small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement. At a minimum, the schedule shall be consistent with Table 2 herein.

Comment [KWA10]: Comment: VA needs to set minimum parameters for schedule to develop and implement MS4 Program Plan

Table 1: Schedule of MS4 Program Plan Updates for Existing Permittees Required in this Permit

Program Update Requirement	Permit Reference	Update Completed By
Updated TMDL Action Plans (TMDLs approved before July of 2008)	Section I B	As soon as possible and no later than 24-12 months after permit coverage
Other TMDL Action Plans for applicable TMDLs approved between July 2008 and June December 31, 2013	Section I B	As soon as possible and no later than 12 months after permit coverage 36 months after permit coverage
TMDL Action Plans for applicable TMDLs approved after December 31, 2012 June of 2013	Section I	As soon as possible and no later than 18 36 months after notification by the department of their approval
Chesapeake Bay TMDL Action Plan	Section I C	As soon as possible and no later than 24 months after permit coverage
Public Education Outreach Plan	Section II B	As soon as possible and no later than 12 months after permit coverage
Updated Outfall System Map, including All Outfalls, Roads with Drainage Systems, Municipal Streets, Catch Basins, Curbs, Gutters, Ditches, Man-made Channels or Storm Drains, Completed	Section II B	As soon as possible and no later than 12 48 months after permit coverage
Illicit Discharge Procedures	Section II B	As soon as possible and no later than 12 months after permit coverage
Single Family SWM Special Criteria	Section II B	As soon as possible and no later than 12 months after permit coverage
Stormwater Management Progressive Compliance and Enforcement	Section II B	As soon as possible and no later than 24 months after permit coverage
Operator-Owned Stormwater Management Inspection Procedures	Section II B	As soon as possible and no later than 12 months after permit coverage
Daily Good Housekeeping Procedures	Section II B	As soon as possible and no later than 12 24 months after permit coverage
SWPPP Locations	Section II B	As soon as possible and no later than 12 months after permit coverage

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Comment [KWA11]: Comment: This needs to be broken into 2 separate schedules for existing permittees vs. new applicants. For existing permittees:

- 1) There should be no extension of time for activities that were to be completed during current permit cycle, so that all updates must be within 12 months of permit coverage unless otherwise noted; or
- 2) The fact sheet must include a rationale for how the timeframes meet the MEP standard in order to remove the objection.

Dates are suggestions for a more aggressive schedule as discussed in EPA's 1/31/2013 letter.

Comment [KWA12]: Comment: Gives all permittees up to 18 months to develop TMDL action plans consistent with the current permit, but also ensures there is no extension of time for activities that were to be completed during current permit cycle.

Comment [KWA13]: Comment: Consistent with current permit

Comment [KWA14]: Comment: Gives all permittees up to 18 months to develop TMDL action plans.

Comment [KWA15]: Comment: Consistent with definition of municipal separate storm sewer under 40 CFR §122.26(b)(8).

<u>SWPPP Implementation</u>	<u>Section II B</u>	<u>As soon as possible and no later than 6249 months after permit coverage with internal goals</u>
<u>Update Turf & Landscape Nutrient Management Plan (NMP) Locations, Implementation Schedule and Implementation on State Lands</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>Nutrient Management Plan (NMP) Locations and Implementation Schedule for Other (non-state) MS4 operators</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>NMP Implementation for Other (non-state) MS4 operators</u>	<u>Section II B</u>	<u>As soon as possible and no later than 60 months after permit coverage</u>
<u>Training Schedule and Program</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>

Comment [KWA16]: Comment: Given that nutrient management on state lands is a requirement within current permit, permit or fact sheet should support why a 60-month schedule meets the MEP standard or provide a more aggressive schedule for implementation, such as 12 months

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Table 2: Schedule of MS4 Program Plan Required in this Permit for New Applicants		
Program Update Requirement	Permit Reference	Update Completed By
<u>TMDL Action Plans for applicable TMDLs approved before January 1, 2013</u>	<u>Section I B</u>	<u>As soon as possible and no later than 18 months after permit coverage</u>
<u>TMDL Action Plans for applicable TMDLs approved after December 31, 2012</u>	<u>Section I</u>	<u>As soon as possible and no later than 18 months after notification by the department of their approval</u>
<u>Chesapeake Bay TMDL Action Plan</u>	<u>Section I C</u>	<u>As soon as possible and no later than 24 months after permit coverage</u>
<u>Public Education Outreach Plan</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>System Map, including All Outfalls, Roads with Drainage Systems, Municipal Streets, Catch Basins, Curbs, Gutters, Ditches, Man-made Channels or Storm Drains, Completed</u>	<u>Section II B</u>	<u>As soon as possible and no later than 54 months after permit coverage</u>
<u>Illicit Discharge Procedures</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>Single Family SWM Special Criteria</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>Stormwater Management Progressive Compliance and Enforcement</u>	<u>Section II B</u>	<u>As soon as possible and no later than 24 months after permit coverage</u>
<u>Operator-Owned Stormwater Management Inspection Procedures</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>Daily Good Housekeeping Procedures</u>	<u>Section II B</u>	<u>As soon as possible and no later than 24 months after permit coverage</u>
<u>SWPPP Locations</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>SWPPP Implementation</u>	<u>Section II B</u>	<u>As soon as possible and no later than 24 months after permit coverage</u>

Comment [KWA17]: Comment: This needs to be broken into 2 separate schedules for existing permittees vs. new applicants.

Where EPA has provided dates that Virginia feels are impractical, VA should provide justification for allowing more time in the permit.

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Comment [KWA18]: Comment: Gives new permittees at least 18 months to develop TMDL action plans.

Comment [KWA19]: Comment: Consistent with definition of municipal separate storm sewer under 40 CFR §122.26(b)(8).

<u>Turf & Landscape Nutrient Management Plan (NMP) Locations and Implementation Schedule</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>
<u>NMP Implementation</u>	<u>Section II B</u>	<u>As soon as possible and no later than 60 months after permit coverage</u>
<u>Training Schedule and Program</u>	<u>Section II B</u>	<u>As soon as possible and no later than 12 months after permit coverage</u>

SECTION I

DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this state ~~general~~ permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this ~~general~~ state-permit, the operator~~permittee~~ is authorized to discharge in accordance with this ~~general~~ state-permit from the small municipal separate storm sewer system identified in the registration statement into surface waters identified in its registration statement.

B. ~~Special conditions.~~ A total maximum daily load (TMDL) ~~approved by the State Water Control Board may include a wasteload allocation to the regulated small MS4 that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be addressed through the measurable goals of the MS4 Program Plan. A wasteload allocation does not establish that the operator of a regulated small MS4 is in or out of compliance with the conditions of this permit.~~

1. ~~The operator shall update its MS4 Program Plan to include measurable goals, schedules, and strategies to ensure MS4 Program consistency with the assumptions of the TMDL WLA within 18 months of permit coverage; or, within 18 months of the effective date of any reopening of this permit to include wasteloads allocated to the regulated small MS4 after issuance of permit coverage.~~

2. ~~The measurable goals, schedules, strategies, and other best management practices (BMPs), required in an updated MS4 Program Plan to assure MS4 Program consistency with an approved TMDL for the pollutant identified in a WLA are, at a minimum:~~

a. ~~The operator shall develop a list of its current ordinances and legal authorities, BMPs, policies, plans, procedures and contracts implemented as part of the MS4 Program that are applicable to reducing the pollutant identified in a WLA.~~

b. ~~The operator shall evaluate existing ordinances and legal authorities, BMPs, policies, plans, procedures and contracts of the existing MS4 Program to determine the effectiveness of the MS4 Program in addressing reductions of the pollutant identified in the WLA. The evaluation shall identify any weakness or limitation in the MS4 Program to reduce the pollutant identified in the WLA in a manner consistent with the TMDL.~~

c. ~~The operator shall develop a schedule to implement procedures and strategies that address the MS4 Program weaknesses such as timetables to update existing ordinances and legal authorities within two years, BMPs, policies, plans, procedures~~

and contracts to ensure consistency with the assumptions of the TMDL WLA. When possible, source elimination shall be prioritized over load reduction.

d. The operator shall implement the schedule established in Section I B 2 c.

3. The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA. This may include additional employee training regarding the sources and methods to eliminate and minimize the discharge of the pollutant identified in the WLA.

4. The operator is encouraged to participate as a stakeholder in the development of any implementation plans developed to address the TMDL and shall incorporate applicable best management practices identified in the TMDL implementation plan in their MS4 Program Plan. The operator may choose to implement BMPs of equivalent design and efficiency instead of those identified in the TMDL implementation plan, provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the TMDL and the WLA.

5. The operator shall develop and implement outfall reconnaissance procedures to identify potential sources of the pollutant identified in the WLA from anthropogenic activities. The operator shall conduct reconnaissance in accordance with the following:

a. Should the operator have 250 or more total outfalls discharging to the surface water identified in the WLA, the operator shall perform reconnaissance on a minimum of 250 outfalls for each WLA assigned at least once during the five year permit period and shall perform reconnaissance on a minimum of 35 outfalls per year.

b. Should the operator have less than 250 total outfalls discharging to an identified surface water, the operator shall perform reconnaissance on all outfalls during the five year permit period and shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned.

The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," EPA cooperative agreement number X-82907801-0, for guidance in implementing its outfall reconnaissance procedures. The operator shall implement procedures designed to reduce the discharge of the pollutant in a manner consistent with the TMDL. Physically interconnected MS4s may coordinate outfall reconnaissance to meet the requirements of this subdivision.

6. The operator shall evaluate all properties owned or operated by the MS4 operator that are not covered under a separate VPDES permit for potential sources of the pollutant identified in the WLA. Within three years of the required date for updating the MS4 Program Plan, the operator shall conduct a site review and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation in accordance with the following schedule:

a. As a part of the site review, the operator shall collect a total of two samples from a representative outfall for each identified municipal property. One sample shall be taken during each of the following six month periods: October through March, and April through September.

b. All collected samples shall be grab samples and collected within the first 30 minutes of a runoff producing event that is greater than 0.1 inches in magnitude and

that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the property. The required 72-hour storm event interval may also be waived where the operator documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. Analytical methods shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

c. For properties where there is found to be a discharge of the pollutant identified in the WLA, the operator shall develop and implement a schedule to minimize the discharge of the pollutant identified in the WLA in a manner consistent with the approved TMDL.

7. The operator shall conduct an annual characterization that estimates the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA, discharged by the regulated small MS4.

8. As part of the annual evaluation, the operator shall update the MS4 Program Plan to include any new information regarding the TMDL in order to ensure consistency with the TMDL.

9. Along with reporting requirements in Section II E, the operator shall include the following with each annual report:

a. Copies of any updates to the MS4 Program Plan completed during the reporting cycle and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the assumptions of the TMDL WLA.

b. The estimate of the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA discharged by the regulated small MS4 for each WLA.

B. Special conditions for approved total maximum daily loads (TMDL) other than the Chesapeake Bay TMDL. An approved TMDL may allocate an applicable wasteload to a small MS4 that identifies a pollutant or pollutants for which additional stormwater controls are necessary for the surface waters to meet water quality standards. The MS4 operator/permittee shall address the pollutants in accordance with this special condition where the MS4 has been allocated a wasteload in an approved TMDL.

1. The operator/permittee shall maintain an updated MS4 Program Plan that includes a specific TMDL Action Plan for pollutants allocated to the MS4 in approved TMDLs. TMDL Action Plans may be implemented in multiple phases over more than one state permit cycle using the adaptive iterative approach provided adequate progress is made to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL wasteload allocations. Progress shall be demonstrated by representative and adequate monitoring or other methods (e.g. modeling) as described below. These TMDL Action Plans shall identify the best management practices and other interim milestone activities to be implemented during the remaining term of this permit. The plan shall include an estimated end date for achieving the applicable wasteload allocations and, for planning purposes, a projection of BMPs and other implementation steps expected to address the WLA, outside of the permit term, as applicable, demonstrated toward complete implementation. These TMDL Action Plans shall identify the best management practices and other interim

Comment [KWA20]: Comment: Note that this language is consistent with 1/22 draft of Phase I MS4 permit for Arlington County

milestones implementation steps to be implemented during the remaining terms of this state permit.

a. In accordance with Table 1 in this section, the operator/permittee shall update the MS4 Program Plans to address any new or modified requirements established under this special condition for pollutants identified in TMDL wasteload allocations approved prior to July 8, 2008.

b. In accordance with Table 1 in this section, the operator/permittee shall update the MS4 Program Plan to incorporate Action Plans that identify the best management practices and other interim milestone activities and other implementation steps that will be implemented during the remaining term of this general permit for pollutants identified in TMDL wasteload allocations approved either on or after July 8, 2008, and prior to issuance of this permit. Each TMDL Action Plan must include an estimated end date for achieving the applicable wasteload allocations and, for planning purposes, a projection of BMPs and other implementation steps expected to address the WLA, outside of the permit term, as applicable.

c. In accordance with Table 1 in this section, the operator/permittee shall update the MS4 Program Plan with TMDL Action Plans that identify the best management practices, and other interim milestone activities and other steps that will be implemented during the remaining term of this general state permit for pollutants identified in TMDL wasteload allocations approved after issuance of this permit for impairment listed on the 2012 § 303(d)/305(b) list and for which a TMDL schedule identifies its development as occurring during this state permit cycle. Each TMDL Action Plan must include an estimated end date for achieving the applicable wasteload allocations and, for planning purposes, a projection of BMPs and other implementation steps expected to address the WLA, outside of the permit term, as applicable.

2. The operator/permittee shall, in accordance with the schedule contained in Tables 1 and 2 herein, include in its TMDL Action Plan that must be submitted to the department within 18 months of the department's approval of a TMDL or updated within 12 months of permit coverage, and then reviewed and accepted by the department:

a. Develop and maintain a list of its legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements applicable to reducing the pollutant identified in each applicable WLA;

b. Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Section II B herein, that have been implemented as part of the MS4 Program Plan and that are applicable to reducing the pollutant identified in the WLA;

c. Enhance its the public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in each applicable the WLA;

d. Assess all facilities/sources of the pollutant(s) of concern owned or operated by the MS4 operator/permittee that are not covered under a separate VPDES permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purpose of this assessment, "significant source" means a discharge from a is identified as facilities of concern where the pollutant discharge is expected to be greater than that average expected existing discharge for the land use identified in the TMDL. For example, the discharge of bacteria would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited.

Comment [lgk21]: Comment: Clarified, unclear what facilities of concern are

Comment [lgk22]: Comment: Recommend clarifying or defining what mean by "significant source."

Comment [lgk23]: Comment: Recommend that this analysis belongs in the Fact Sheet.

e. Develop-develop and implement a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, representative and adequate water quality monitoring results, or modeling tools that are consistent with the corresponding TMDL allocations and assumptions and accepted by the department to estimate pollutant reductions for the pollutant or pollutants of concern from implementation of the MS4 Program Plan. This will ensure that pollutant reductions resulting from management actions can be accurately compared to TMDL wasteload allocations. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The operator/permittee may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 operators or other third parties, as appropriate. This evaluation shall include assessment of the facilities-sources identified in subdivision 2 d of this subsection. The methodology used for assessment shall be described in the TMDL Action Plan.

3. Analytical methods for any monitoring performed pursuant to this permit shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist under 40 CFR Part 136, the operator/permittee must use a method consistent with the assumptions and requirements of applicable TMDL WLAs.

4. The operator/permittee is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The operator/permittee may incorporate applicable best management practices identified in the TMDL implementation plan into its-the MS4 Program Plan or may choose to implement BMPs of equivalent design and efficiency provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA.

5. Annual reporting requirements.

a. On an annual basis, tThe operator/permittee shall submit the required TMDL Action Plans with the appropriate annual report associated schedule identified in this state general permit.

b. On an annual basis, tThe operator/permittee shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.

6. The operator/permittee shall identify the best management practices and other steps that will be implemented during the next state permit term as part of the operator/permittee's reapplication for coverage as required under Section III M herein.

C. Special condition for the Chesapeake Bay TMDL.

1. Definitions. The following definitions apply to this state permit for the purpose of the special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses serviced by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed on or after July 1, 2009.

"Transitional sources" means regulated land disturbing activities that are intended to be temporary in nature and discharge through the MS4.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

Comment [lgk24]: Comment: Recommend explaining in Fact Sheet that this is the end of the last progress run prior to the establishment of the Bay TMDL, and is thus considered the "implementation baseline" for the Bay TMDL.

2. Chesapeake Bay TMDL planning. The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s affording MS4s permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

a. In accordance with Table 1 in this section, the operator/permittee shall develop and submit a phased Chesapeake Bay TMDL Action Plan that includes:

(1) A review of the baseline program implemented as a requirement of this state permit including a review of the existing legal authorities;

(2) The identification of any new or modified legal authorities such as ordinances, state and other permits, orders, contracts and interjurisdictional agreements implemented or needing to be implemented to meet the requirements of this special condition;

(3) The means and methods that will be utilized to address discharges into the MS4 from new sources; "Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and its small coastal basins, and York River Basin, and the eastern shore of the Chesapeake Bay.

(4) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2008, based on the 2009 progress run. The operator/permittee shall utilize the appropriate version of applicable Tables 2a-2d in this section for each based on the river basin to which the MS4 discharges that is included in said tables by multiplying the total existing acres served by the MS4 on June 30, 2009, and the 2009 edge of stream (EOS) loading rate.

Comment [KWA25]: Comment: Note that this language is consistent with 1/22 draft of Phase I MS4 permit for Arlington County

Comment [KWA26]: Comment: Fact sheet must explain why Phase 5.3.2 is the basis for these numbers and how small MS4s should use Phase 5.3.2 outputs or other acceptable sources to fill in columns 3 and 5

Comment [lgk27]: Comment: Consider putting Tables at end of document. It is confusing to have them embedded like this.

Table 2 a: Calculation Sheet for Estimating Existing Source Loads for the James River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Edge of Stream Loading Rate (lbs/ac)*</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>9.39</u>	
<u>Regulated Urban Pervious</u>			<u>6.99</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.76</u>	
<u>Regulated Urban Pervious</u>			<u>0.5</u>	

<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>676.94</u>	
<u>Regulated Urban Pervious</u>			<u>101.08</u>	

1258 • -Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

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Table 2 b: Calculation Sheet for Estimating Existing Source Loads for the Potomac River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>16.86</u>	
<u>Regulated Urban Pervious</u>			<u>10.07</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.62</u>	
<u>Regulated Urban Pervious</u>			<u>0.41</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>1,171.32</u>	
<u>Regulated Urban Pervious</u>			<u>175.8</u>	

1259 • Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

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Table 2 c: Calculation Sheet for Estimating Existing Source Loads for the Rappahannock River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (6/30/09)</u>	<u>2009 EOS Loading Rate (lbs/ac)</u>	<u>Estimated Total POC Load Based on 2009 Progress Run</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>9.38</u>	
<u>Regulated Urban Pervious</u>			<u>5.34</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>1.41</u>	

Regulated Urban Pervious			0.38	
Regulated Urban Impervious	Total Suspended Solids		423.97	
Regulated Urban Pervious			56.01	

- Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Table 2 d: Calculation Sheet for Estimating Existing Source Loads for the York River Basin

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/ac)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		7.31	
Regulated Urban Pervious			7.65	
Regulated Urban Impervious	Phosphorus		1.51	
Regulated Urban Pervious			0.51	
Regulated Urban Impervious	Total Suspended Solids		456.68	
Regulated Urban Pervious			72.78	

(5) An estimate of the total reductions necessary to reduce the annual POC loads from existing sources to the L2"Level 2" implementation level utilizing the applicable appropriate version of Tables 3a-3d in this section based on the river basin to which the MS4 discharges. This shall be calculated by multiplying the total existing acres serviced by the MS4 during the first state permit cycle of coverage by this general permit and the required reduction in loading rate. Existing sources located in any portion of an expanded urbanized area or new urbanized area which are identified as being part of an urbanized area by the 2010 U.S. Census shall not be included in the total acreage in determining the 5.0% reduction requirement in this general state permit, or shall be expected to achieve 40% of the reduction requirements in the next general permit term.

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Comment [lgk28]: Comment: Wording is unclear; attempted to revise. Also, include results of 2010 census since WIP assumes L2 levels on all urban lands, not just existing regulated urban lands, or require that these sources complete the same amount of reductions as existing permitted sources by the end of the second permit term in order to ensure sufficient protections for new or expanded sources

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Table 3 a: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the James River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.04</u>	
<u>Regulated Urban Pervious</u>			<u>0.02</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.002</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>6.67</u>	
<u>Regulated Urban Pervious</u>			<u>0.44</u>	

- Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

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Table 3 b: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Potomac River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.08</u>	
<u>Regulated Urban Pervious</u>			<u>0.03</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.001</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>11.71</u>	
<u>Regulated Urban Pervious</u>			<u>0.77</u>	

- Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

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Table 3 c: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Rappahannock River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.04</u>	
<u>Regulated Urban Pervious</u>			<u>0.02</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.002</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>4.24</u>	
<u>Regulated Urban Pervious</u>			<u>0.25</u>	

- Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

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Table 3 d: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the York River Basin

<u>Subsource</u>	<u>Pollutant</u>	<u>Total Existing Acres Served by MS4 (7/1/09)</u>	<u>First Permit Cycle Requiring Reduction in Loading Rate (lbs/ac)</u>	<u>Total Reduction Required First Permit Cycle (lbs)</u>
<u>Regulated Urban Impervious</u>	<u>Nitrogen</u>		<u>0.03</u>	
<u>Regulated Urban Pervious</u>			<u>0.02</u>	
<u>Regulated Urban Impervious</u>	<u>Phosphorus</u>		<u>0.01</u>	
<u>Regulated Urban Pervious</u>			<u>0.002</u>	
<u>Regulated Urban Impervious</u>	<u>Total Suspended Solids</u>		<u>4.60</u>	
<u>Regulated Urban Pervious</u>			<u>0.32</u>	

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(6) The means and methods that will be utilized to implement sufficient reductions from existing sources equal to 5.0% of the estimated total reductions necessary. The methodology may incorporate reductions documented through the implementation of this state permit;

(7) The means and methods used to offset the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2014, that disturb greater than one acre as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post-development stormwater management facilities. The operator/permittee shall utilize Table 4 in this section to develop the equivalent pollutant load for nitrogen and total suspended solids. The operator/permittee shall offset 5.0% of the calculated increased load from these new sources during the permit cycle.

(8) The means and methods to offset the increased loads from grandfathered projects that disturb greater than one acre that begin construction after July 1, 2014, where the project utilized an average land cover condition greater than 16% impervious cover in the design of post-development stormwater management facilities. The operator/permittee shall utilize Table 4 in this section to develop the equivalent pollutant load for nitrogen and total suspended solids.

(9) The operator/permittee shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this state permit as part of its permit reapplication and not during the term of this state permit so long as the

Comment [KWA29]: Comment: Recommend clarifying the definition for grandfathered projects

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permittee still achieves 40% of the necessary reductions by the end of the next permit term.

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Table 4: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins

<u>Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)</u>	<u>Phosphorus Loading Rate (lbs/ac)</u>	<u>Nitrogen Loading Rate (lbs/ac)</u>	<u>Total Suspended Solids Loading Rate (lbs/ac)</u>
James River Basin	1.0	5.2	420.9
Potomac River Basin	1.0	6.9	469.2
Rappahannock River Basin	1.0	6.7	320.9
York River Basin	1.0	9.5	531.6

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(10) A list of future projects and associated acreage that qualify as grandfathered in accordance with 4VAC50-60-48;

(11) An estimate of the expected costs to implement the requirements of this special condition during the state permit cycle; and

(12) An opportunity for receipt and consideration of public comment regarding the draft Chesapeake Bay TMDL Action Plan.

b. As part of development of the Chesapeake Bay TMDL Action Plan, the operator/permittee may shall consider any or all of the following recommendations:

(1) Placement of BMPs on unregulated lands. Reductions may only be credited towards the required reductions after any required unregulated land baseline pollutant reductions are met for treated acres and so long as fewer reductions on regulated lands do not cause or contribute to local water quality impairments;

(2) Utilization of stream restoration projects;

(3) Establishment of a memorandum of understanding (MOU) with other MS4 operator/permittees that discharge to the same or adjacent eight digit hydrologic unit within the same basin to implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between among the cooperative MS4s;

(4) Utilization of any pollutant trading or offset program in accordance with §§ 10.1-603.15:1 and 10.1-603.8:1 of the Code of Virginia, governing trading and offsetting; and

(5) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law.

3. Chesapeake Bay TMDL Action Plan implementation. The operator/permittee shall fully implement the TMDL Action Plan to the maximum extent practicable and demonstrate adequate substantial progress for by the end of this general state permit term towards the long-term compliance targets for TMDL wasteload allocations. For the purposes of this permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate substantial progress:

Comment [KWA30]: Comment: The permittee is creating a plan that should reflect what they are able to do and therefore should be fully implemented.

a. Implementation of nutrient management plans in accordance with the schedule identified in the minimum control measure in Section II herein related to pollution prevention/good housekeeping for municipal operations;

b. Implementation of the minimum control measure in Section II herein related to construction site stormwater runoff control in accordance with this state permit shall address discharges from transitional sources;

c. Implementation of the means and methods to address discharges from new sources in accordance with the minimum control measure in Section II herein related to post-construction stormwater management in new development and development of prior developed lands and in order to offset 5.0% of the total increase in POC loads between July 1, 2009, and June 30, 2014. Increases in the POC load from grandfathered projects initiating construction after July 1, 2014, must be offset prior to completion of the project; and

d. Implementation of means and methods sufficient to meet 5.0% of the total required reductions of POC loads from existing sources in accordance with the Chesapeake Bay TMDL Action Plan.

4. Annual reporting requirements.

a. In accordance with Table 1 in this section, the operator/permittee shall submit the Chesapeake Bay Action Plan to the Department for its review and acceptance.

b. Each subsequent annual report shall include a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for total-nitrogen, phosphorus, and sedimenttotal suspended solidstotal-suspended solids.

c. Each subsequent annual report shall include a list of control measures in an electronic format provided by the department that were implemented during the reporting cycle and the estimated reduction achieved by the control. The list shall be submitted in an electronic format provided by the department. For stormwater management controls, the report shall include the information required in Section II B 5 e herein, and shall include information as to whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.

d. Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for total-nitrogen, phosphorus, and sedimenttotal suspended solids.

5. The operator/permittee shall include the following as part of its reapplication package due in accordance with Section III M herein:

a. Documentation that sufficient control measures have been implemented to meet the compliance target identified in this special condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet the 5.0% reduction in this state permit and a schedule of implementation to ensure a permanent 5.0% reduction must be provided. Any credits must be certified, and offsets may not cause or contribute to local water quality impairments; and

b. A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant load by an additional 35% (or a total of 40% if more than a 5.0% reduction is achieved during the first phase) as determined using Tables 3a-3ed in

1392 this section unless alternative calculations have been provided by the
1393 Commonwealth.

1394 SECTION II

1395 MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

1396 A. The operator of a regulated small MS4 must develop, implement, and enforce a MS4
1397 Program designed to reduce the discharge of pollutants from the regulated small MS4 to the
1398 maximum extent practicable (MEP), to protect water quality, to ensure compliance by the
1399 operator with water quality standards, and to satisfy the appropriate water quality requirements
1400 of the Clean Water Act and its implementing regulations. The MS4 Program must include the
1401 minimum control measures described in paragraph B of this section. Implementation of best
1402 management practices consistent with the provisions of an iterative MS4 Program required
1403 pursuant to this section constitutes compliance with the standard of reducing pollutants to the
1404 "maximum extent practicable", protects water quality in the absence of a TMDL wasteload
1405 allocation, ensures compliance by the operator with water quality standards, and satisfies the
1406 appropriate water quality requirements of the Clean Water Act and regulations in the absence of
1407 a TMDL WLA. The requirements of this section and those special conditions set out in Section I
1408 B also apply where a WLA is applicable.

1409 No later than January 9, 2009, the operator shall review its existing MS4 Program Plan and
1410 submit a schedule to develop and implement programs to meet the conditions established by
1411 this permit. For operators of regulated small MS4s that are applying for initial coverage under
1412 this general permit, the schedule to develop and implement the MS4 Program Plan shall be
1413 submitted with the completed registration statement.

1414 B. Minimum control measures.

1415 1. Public education and outreach on stormwater impacts. Implement a public education
1416 program to distribute educational materials to the community or conduct equivalent
1417 outreach activities about the impacts of stormwater discharges on water bodies and the
1418 steps that the public can take to reduce pollutants in stormwater runoff. The department
1419 recommends that the operator review the Environmental Protection Agency (EPA)
1420 publication entitled "Getting in Step: A Guide for Conducting Watershed Outreach
1421 Campaigns," publication number EPA-841-B-03-002, for guidance in developing a public
1422 education program.

1423 The operator shall identify, schedule, implement, evaluate and modify, as necessary,
1424 BMPs to meet the following public education and outreach measurable goals:

1425 a. Increased individual and household knowledge about the steps that they can take
1426 to reduce stormwater pollution, placing priority on reducing impacts to impaired
1427 waters and other local water pollution concerns;

1428 b. Increased public employee, business, and general public knowledge of hazards
1429 associated with illegal discharges and improper disposal of waste, including pertinent
1430 legal implications;

1431 c. Increased individual and group involvement in local water quality improvement
1432 initiatives including the promotion of local restoration and clean-up projects,
1433 programs, groups, meetings and other opportunities for public involvement;

1434 d. Diverse strategies to target audiences specific to the area serviced by the
1435 regulated small MS4;

1436 e. Improved outreach program to address viewpoints and concerns of target
1437 audiences, with a recommended focus on minorities, disadvantaged audiences and
1438 minors; and

f. Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

a. The operator/permittee shall continue to implement the public education and outreach program as included in its the registration statement until the program is updated by the deadlines provided in Tables 1 and 2 herein to meet the conditions of this state permit. Operators that who have not previously held MS4 permit coverage shall implement this program in accordance with the schedule in Table 24 of this section.

b. The public education and outreach program shall should be designed to achievewith consideration of the following goals:

(1) Increasing target audience knowledge about the steps that can be taken to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

(2) Increasing target audience knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) Implementing a diverse program with strategies that are targeted towards audiences most likely to have significant stormwater impacts.

c. The updated program shall be designed to:

(1) Identify, at a minimum, three high-priority water quality issues, contributed to by the discharge of stormwater (e.g., Chesapeake Bay nutrients, pet wastes and local bacteria TMDLs, high-quality receiving waters, and illicit discharges from commercial sites) and a rationale for clearly supporting the selection of the three high-priority water quality issues;

(2) Identify and estimate the population size of the target audience or audiences who is most likely to have significant impacts for each high-priority water quality issue;

(3) The permittee shall conduct the following number of education and outreach activities and materials:

- Annually publish at least one issue of a newsletter, a pamphlet, a flyer, or a web site that includes general stormwater educational information, a general description of permittee's Stormwater Management Program, and/or information about permittee's stormwater management activities. The list of publications and the content of the publications must be reviewed and updated at least once during each year of permit coverage. Publications should include a list of references (or links) to refer the reader to additional information (e.g., DC and US EPA stormwater websites, and any other sources that will be helpful to readers).
- Annually select and utilize at least two distribution methods to distribute stormwater educational materials and/or information to the target audiences using a variety of distribution methods, including but not limited to: displays, posters, signs, pamphlets, booklets, brochures, radio, local cable TV, newspaper articles, other advertisements (e.g., at bus and train stops/stations), bill stuffers, posters, presentations, conferences, meetings, fact sheets, storm drain stenciling Develop relevant message or messages and associated educational and outreach materials (e.g., various media such as printed materials, billboard and mass transit advertisements, signage at select locations, radio advertisements, television advertisements, websites, and social media) for message

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1487 distribution to the selected target audiences while considering the
1488 viewpoints and concerns of the target audiences including minorities,
1489 disadvantaged audiences, and minors;

1490 (4) Provide for public participation during public education and outreach program
1491 development;

1492 (5) Annually conduct sufficient education and outreach activities designed to reach
1493 an equivalent 20% of each high-priority issue target audience. It shall not be
1494 considered noncompliance for failure to reach 20% of the target audience. However,
1495 it shall be a compliance issue if insufficient effort is made to annually reach a
1496 minimum of 20% of the target audience; and

1497 (6) Provide for the adjustment of target audiences and messages including
1498 educational materials and delivery mechanisms to reach target audiences in order to
1499 address any observed weaknesses or shortcomings as necessary.

1500 (7) a.
1501 d. The operator/permittee may coordinate its their public education and outreach
1502 efforts with other MS4 operations as appropriate in the same sub-watershed [?];
1503 however, each operator/permittee shall be individually responsible for meeting all of
1504 its state permit requirements.

1505 e. Prior to application for continued state permit coverage required in Section III M,
1506 the operator shall evaluate the education and outreach program for:

1507 (1) Appropriateness of the high-priority stormwater issues;

1508 (2) Appropriateness of the selected target audiences for each high-priority
1509 stormwater issue;

1510 (3) Effectiveness of the message or messages being delivered as documented using
1511 the following measurable outcomes: []; and

1512 (4) Effectiveness of the mechanism or mechanisms of delivery employed in reaching
1513 the target audiences.

1514 f. The MS4 Program Plan shall describe how the conditions of this permit shall be
1515 updated in accordance with Table 1 in this section.

1516 g. The operator/permittee shall include the following information in each the annual
1517 report submitted to the department during this permit termthe following:

1518 (1) A list of the education and outreach activities conducted during the reporting
1519 period for each high-priority water quality issue, the estimated number of people
1520 reached, and an estimated percentage of the target audience or audiences that will
1521 be reached; and

1522 (2) A list of the education and outreach activities that will be conducted during the
1523 next reporting period for each high-priority water quality issue, the estimated number
1524 of people that will be reached, and an estimated percentage of the target audience
1525 or audiences that will be reached.

1526 2. Public involvement/participation.

1527 The operator shall comply with applicable state, tribal, and local public notice
1528 requirements and identify, schedule, implement, evaluate and modify, as necessary,
1529 BMPs to meet the following public involvement/participation measurable goals:

1530 a. Promote the availability of the operator's MS4 Program Plan and any modifications
1531 for public review and comment. Public notice shall be given by any method
1532 reasonably calculated to give actual notice of the action in question to the persons
1533 potentially affected by it, including press releases or any other forum or medium to

Comment [lgk31]: Comment: This does not need to be included. As worded, the only potential violation would be failure to appropriately design activities.

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1534 elicit public participation. Provide access to or copies of the MS4 Program Plan or
1535 any modifications upon request of interested parties in compliance with all applicable
1536 freedom of information regulations;

1537 b. Provide access to or copies of the annual report upon request of interested parties
1538 in compliance with all applicable freedom of information regulations; and

1539 c. Participate, through promotion, sponsorship, or other involvement, in local
1540 activities aimed at increasing public participation to reduce stormwater pollutant
1541 loads and improve water quality.

1542 a. Public involvement.

1543 (1) The operator/permittee shall comply with any applicable federal, state, and local
1544 public notice requirements.

1545 (2) The operator/permittee shall:

1546 (a) Maintain an updated MS4 Program Plan on its the operator's web page. Updates
1547 to the MS4 Program Plan shall be completed a minimum of once a year and shall
1548 should be updated in conjunction with the annual report, so that each update occurs
1549 within 30 days of submittal of the annual report to the department in advance of each
1550 annual report.

1551 (b) Post copies of each annual report on the operator/permittee's web page within 30
1552 days of submittal to the department and retain copies of annual reports online for the
1553 duration of this state permit; and

1554 (c) Prior to reapplying for coverage as required by Section III M, notify the public and
1555 provide for receipt of comment of the proposed MS4 Program Plan that will be
1556 submitted with the registration statement. As part of the reapplication process, the
1557 operator/permittee shall address how the received comments were considered it
1558 considered all comments received in the development of its the MS4 Program Plan.
1559 The operator/permittee shall give pPublic notice shall be given by a method
1560 reasonably calculated to give actual notice of the action in question to the persons
1561 potentially affected by it, including press releases or any other forum or medium to
1562 solicit public participation.

1563 b. Public participation. The operator/permittee shall participate, through promotion,
1564 sponsorship, or other involvement, in a minimum of four local activities annually such
1565 as stream cleanups, hazardous waste cleanup days, and meetings with watershed
1566 associations, environmental advisory committees, and other environmental
1567 organizations that operate within proximity to the permittee's regulated small MS4.
1568 The activities shall be aimed at increasing public participation to reduce stormwater
1569 pollutant loads; improve water quality; and support local restoration and clean-up
1570 projects, programs, groups, meetings, or other opportunities for public involvement.

1571 c. The MS4 Program Plan shall include written procedures for implementing this
1572 program.

1573 d. Each annual report shall include:

1574 (1) A web link to the MS4 Program Plan and annual report; and

1575 (2) Documentation of compliance with the public participation requirements of this
1576 section.

1577 3. Illicit discharge detection and elimination. The MS4 Program shall:

1578 a. Develop, implement and enforce a program to detect and eliminate illicit
1579 discharges, as defined at 4VAC50-60-10, into the regulated small MS4. The
1580 department recommends that the operator review the publication entitled "Illicit

Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," Environmental Protection Agency (EPA) cooperative agreement number X-82907801-0, for guidance in implementing and evaluating its illicit discharge detection and elimination program;

b. Develop, if not already completed, and maintain, an updated storm sewer system map, showing the location of all known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated surface waters and HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water;

c. To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the operator, the State Water Control Board, or by the boardthe Board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flows from fire fighting activities, and flows that have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and not requiring a VPDES permit;

d. Develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4;

e. Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the recurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the operator or the responsible part(ies) of any reporting requirements of 40 CFR Part 140 (2001), 40 CFR Part 147 (2001) and 40 CFR Part 302 (2001) or § 62.1-44.34-19 of the Code of Virginia;

f. Track the number of illicit discharges identified, provide narrative on how they were controlled or eliminated, and submit the information in accordance with Section II-E 3; and

g. Notify, in writing, any downstream regulated MS4 to which the small regulated MS4 is physically interconnected of the small regulated MS4's connection to that system.

a. The operator/permittee shall maintain an accurate storm sewer system map and information table and shall update it in accordance with the schedule set out in Table 1 of this section.

(1) The storm sewer system map must show the following, at a minimum:

1628 (a) The location of all MS4 outfalls, roads with drainage systems, municipal streets,
 1629 catch basins, curbs, gutters, ditches, man-made channels or storm drains. In cases
 1630 where the outfall is located outside of the MS4 operator/permittee's legal
 1631 responsibility, the operator/permittee may elect to map the known point of discharge
 1632 location closest to the actual outfall. Each mapped outfall must be given a unique
 1633 identifier, which must be noted on the map; and

1634 (b) The name and location of all waters receiving discharges from the MS4 outfalls
 1635 and the associated HUC.

1636 (2) At a minimum, the associated information table shall include for each outfall the
 1637 following:

1638 (a) The unique identifier;

1639 (b) The estimated MS4 acreage served;

1640 (c) The name of the receiving surface water and indication as to whether the
 1641 receiving water is listed as impaired on the Virginia 2012 CWA Sections 303(d)
 1642 and/or 305(b) lists; and

1643 (d) The name of any applicable TMDL or TMDLs.

1644 (3) Within 1248 months of coverage under this state permit, the existing
 1645 operator/permittees shall develop and maintain have a complete and updated storm
 1646 sewer system map and information table that includes but is not limited to all MS4
 1647 outfalls, roads with drainage systems, municipal streets, catch basins, curbs, gutters,
 1648 ditches, man-made channels or storm drains located within the boundaries identified
 1649 as "urbanized" areas in the 2010 Decennial Census. The operator/permittee and
 1650 shall submit the updated information table as an appendix to the annual report. New
 1651 permittees shall develop and maintain a complete and updated storm sewer system
 1652 map and information table that includes but is not limited to all MS4 outfalls, roads
 1653 with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-
 1654 made channels or storm drains located within the boundaries identified as
 1655 "urbanized" areas in the 2010 Decennial Census within 54 months of permit
 1656 coverage. The permittee shall submit the information table as an appendix to the
 1657 annual report.

1658 (4) The operator/permittee shall maintain a copy of the current storm sewer system
 1659 map and outfall information table for review upon request by the public or by the
 1660 department.

1661 (5) The operator shall continue to identify other points of discharge. No later than
 1662 _____ 12 months of permit coverage for existing permittees and 54 months of permit
 1663 coverage for new permittees, the operator/permittee shall notify in writing the
 1664 downstream MS4 of any known physical interconnection(s).

1665 b. The operator/permittee shall effectively prohibit, through ordinance or other legal
 1666 mechanism, nonstormwater discharges into the storm sewer system to the extent
 1667 allowable under federal, state, or local law, or regulation or ordinance. Categories of
 1668 non-stormwater discharges or flows (i.e., illicit discharges) identified in 4VAC50-60-
 1669 400 D 2 c (3) must be addressed only if they are identified by the operator/permittee
 1670 or the State Water Control Board, or by the board/Board as significant contributors of
 1671 pollutants to the small MS4. Flows that have been identified in writing by the
 1672 Department of Environmental Quality as *de minimis* discharges are not significant
 1673 sources of pollutants to surface water and do not require a VPDES permit.

1674 c. The operator/permittee shall develop/update, continue to and implement and
 1675 enforce written procedures to detect, identify, and address/eliminate non-stormwater

Comment [KWA32]: Comment: Consistent with definition of municipal separate storm sewer under 40 CFR §122.26(b)(8).

Comment [KWA33]: Comment: Consistent with definition of municipal separate storm sewer under 40 CFR §122.26(b)(8).

Comment [KWA34]: Comment: Consistent with definition of municipal separate storm sewer under 40 CFR §122.26(b)(8).

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discharges, including illegal dumping, to the small MS4. These procedures shall include:

(1) Written dry weather field screening methodologies to detect and eliminate illicit discharges to the MS4 that include field observations and field screening monitoring and that provide:

(a) A prioritized schedule of field screening activities determined by the operator/permittee based on such criteria things as age of the infrastructure, land use, historical illegal discharges, dumping or cross connections.

(b) The minimum number of field screening activities the operator/permittee shall complete annually to be determined as follows: (i) if the total number of outfalls in the small MS4 is less than 50, all outfalls shall be screened annually or (ii) if the small MS4 has 50 or more total outfalls, a minimum of 50 outfalls shall be screened annually.

(c) Methodologies to collect the general information such as time since the last rain, the quantity of the last rain, site descriptions (e.g., conveyance type and dominant watershed land uses), estimated discharge rate (e.g., width of water surface, approximate depth of water, approximate flow velocity, and flow rate), and visual observations (e.g., order, color, clarity, floatables, deposits or stains, vegetation condition, structural condition, and biology;

(d) A time frame upon which to conduct an investigation or investigations to identify and locate the source of any observed continuous or intermittent nonstormwater discharge shall be prioritized based on threats human health, safety and the environment, as follows: (i) illicit discharges suspected of being sanitary sewage or significantly contaminated must be investigated first and (ii) investigations of illicit discharges suspected of being less hazardous to human health and safety such as noncontact cooling water or wash water may be delayed until after all suspected sanitary sewage or significantly contaminated discharges have been investigated, eliminated, or identified. Discharges authorized under a separate VDPES or state permit are natural flow and require no further action under this permit.

(e) Methodologies to determine the source of all illicit discharges shall be conducted. If an illicit discharge is identified found, but within six months of the beginning of the investigation neither the source nor the same nonstormwater discharge has been identified despite the operator/permittee's diligence to identify said information, then the operator/permittee shall document such in accordance with Section II B 3 f. If the observed discharge is intermittent, the operator/permittee must document that a minimum of three separate investigations were made during wet weather events over a six-month time period in an attempt to observe the discharge when it was flowing. If these attempts are unsuccessful, the operator/permittee shall document such in accordance with Section II B 3 f.

(f) Mechanisms to eliminate identified sources of illicit discharges including a description of the policies and procedures for when and how to use legal authorities;

(g) Methods for conducting a follow-up investigation in order to verify that the discharge has been eliminated.

(h) A mechanism to track all investigations to document at a minimum: (i) the date or dates that the illicit discharge was observed and reported; (ii) the results of the investigation; (iii) any follow-up activities to the investigation; (iv) resolution of the investigation; and (v) the date that the investigation was closed.

Comment [KWA35]: Comment: Paragraph confusing as written. Edits attempt to clarify. If these are inaccurate, clarify.

d. ~~The operator/permittee shall eliminate or minimize to the maximum extent practicable, the discharge of nonstormwater discharges hazardous substance and/or oil in the stormwater discharge or discharges from the small MS4. In addition, the permittee must review and modify the MS4 Program Plan must be reviewed to identify measures to prevent the recurrence of such releases, and to respond to such releases, and must be modified where appropriate.~~

e. ~~The operator/permittee shall promote, publicize, and facilitate public reporting of illicit discharges into, through or from MS4s. The operator/permittee shall conduct inspections in response to complaints and follow-up inspections as needed to ensure that corrective measures have been implemented by the responsible party.~~

f. ~~The MS4 Program Plan shall include all procedures developed by the operator/permittee to detect, identify, and address eliminate nonstormwater discharges to the MS4 in accordance with the schedule in Table 1 in this section. In the interim, the operator/permittee shall continue to implement the program as included described in its as part of the registration statement until the program is updated to meet the conditions of this permit. Operators that, who have not previously held MS4 permit coverage, shall implement this program in accordance with the schedule provided in Table 24 in this section.~~

g. ~~Annual reporting requirements. Each annual report shall include:~~

(1) ~~A list of any written notifications of physical interconnection given by the operator/permittee to other MS4s;~~

(2) ~~The total number of outfalls screened during the reporting period, the screening results, and detail of any follow-up actions necessitated by necessary-based on the screening results; and~~

(3) ~~A summary of each investigation conducted by the operator/permittee of any suspected illicit discharge. The summary must include: (i) the date that the suspect discharge was observed, or reported or both; (ii) how the investigation was resolved, including any follow-up; and (iii) resolution of the investigation and the date the investigation was closed.~~

4. ~~Construction site stormwater runoff control.~~

a. ~~The operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.~~

~~The procedures must include the development and implementation of, at a minimum:~~

(1) ~~An ordinance or other mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations, to the extent allowable under state, tribal, or local law. Such ordinances and other mechanisms shall be updated as necessary;~~

(2) ~~Requirements for construction site owners and operators to implement appropriate erosion and sediment control best management practices as part of an erosion and sediment control plan that is consistent with the Erosion and Sediment Control Law and attendant regulations and other applicable requirements of state,~~

tribal, or local law. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology;

(3) Requirements for construction site owners and operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, stormwater discharges from construction activity disturbing less than one acre must secure authorization to discharge under a VSMP permit if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

(4) Procedures for receipt and consideration of information submitted by the public; and

(5) Procedures for site inspection and enforcement of control measures.

b. The operator shall ensure that plan reviewers, inspectors, program administrators and construction site owners and operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;

c. The operator shall track regulated land disturbing activities and submit the following information in accordance with Section II E 3:

(1) Total number of regulated land disturbing activities; and

(2) Total disturbed acreage.

a. Applicable oversight requirements. The operator/permittee shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4 from the following land-disturbing activities:

(1) Land-disturbing activities as defined in § 10.1-560 of the Code of Virginia that result in the disturbance of 10,000 square feet or greater;

(2) Land-disturbing activities in Tidewater jurisdictions, as defined in § 10.1-2101 of the Code of Virginia, that disturb 2,500 square feet or greater and are located in areas designated as Resource Protection Areas (RPA), Resource Management Areas (RMA) or Intensely Developed Acres (IDA), pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act;

(3) Land-disturbing activities disturbing less than the minimum land disturbance identified in subdivision (1) or (2) above for which a local ordinance requires that an erosion and sediment control plan be developed; and

(4) Land-disturbing activities on individual residential lots or sections of residential developments being developed by different property owners and where the total land disturbance of the residential development is 10,000 square feet or greater. The operator/permittee may utilize an agreement in lieu of a plan as provided in § 10.1-563 of the Code of Virginia for this category of land disturbances.

b. Required plan approval prior to commencement of the land disturbing activity. The operator/permittee shall require that land disturbance not begin until an erosion and sediment control plan or an agreement in lieu of a plan as provided in § 10.1-563 is

approved by a VESCP authority in accordance with the Erosion and Sediment Control Act (§ 10.1-560 et seq.). The plan shall be:

(1) Compliant with the minimum standards identified in 4VAC-50-30-40 of the Erosion and Sediment Control Regulations; or

(2) Compliant with department-approved annual standards and specifications. Where applicable, the plan shall be consistent with any additional or more stringent, or both, erosion and sediment control requirements, or more stringent erosion and sediment control requirements, or both, as established by state regulation or local ordinance.

c. Compliance and enforcement.

(1) The operator/permittee shall inspect land-disturbing activities for compliance with an approved erosion and sediment control plan or agreement in lieu of a plan in accordance with the minimum standards identified in 4VAC50-30-40 or with board-approved standards and specifications.

(2) The operator/permittee shall implement an inspection schedule for land-disturbing activities identified in Section II B 4 a as follows:

(a) Upon initial installation of erosion and sediment controls;

(b) At least once during every two-week period;

(c) Within 48 hours of any runoff-producing storm event; and

(d) Upon completion of the project and prior to the release of any applicable performance bonds.

Where an operator/permittee establishes an alternative inspection program as provided for in 4VAC50-30-60 B 2, the written schedule shall be implemented in lieu of Section II B 4 c (2) and the written plan shall be included in the MS4 Program Plan.

(3) Operator/Permittee inspections shall be conducted by personnel who hold an appropriate certificate of competence in accordance with 4VAC-50-50-40. Documentation of certification shall be made available upon request by the VESCP authority or other regulatory agency.

(4) The operator/permittee shall promote to the public a mechanism for receipt of complaints regarding regulated land-disturbing activities and shall follow up on any complaints regarding potential water quality and compliance issues.

(5) The operator/permittee shall utilize, as appropriate, its legal authority to require compliance with the approved plan where an inspection finds that the approved plan is not being properly implemented.

(6) The operator/permittee shall utilize, as appropriate, its legal authority to require changes to an approved plan when an inspection finds that the approved plan is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.

(7) The operator/permittee shall required implementation of appropriate controls to prevent non-stormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land-disturbing activity inspections of the MS4. The discharge of non-stormwater discharges other than those identified in 4VAC50-60-1220 through the MS4 is not authorized by in this state permit.

1863 | (8) The operator/permittee may develop and implement a progressive compliance
1864 | and enforcement strategy provided that such strategy is included in the MS4
1865 | Program Plan.

Comment [lgk36]: Comment: Must define levels of compliance and enforcement. Ensure minimal level is sufficiently protective.

1866 | d. Regulatory coordination. The operator/permittee shall implement enforceable
1867 | procedures to require that large construction activities as defined in 4VAC50-60-10
1868 | and small construction activities as defined in 4VAC50-60-10, including municipal
1869 | construction activities, secure necessary state permit authorizations from the
1870 | department to discharge stormwater.

1871 | e. MS4 Program requirements. The operator/permittee's MS4 Program Plan shall
1872 | include:

1873 | (1) A description of the legal authorities utilized to ensure compliance with the
1874 | minimum control measure in Section II related to construction site stormwater runoff
1875 | control such as ordinances, permits, orders, specific contract language, and
1876 | interjurisdictional agreements;

1877 | (2) Written plan review procedures and all associated documents utilized in plan
1878 | review;

1879 | (3) For the MS4 operator/permittees who obtain department-approved standards and
1880 | specifications, a copy of the current standards and specifications;

1881 | (4) Written inspection procedures and all associated documents utilized in plan
1882 | review including the inspection schedule;

1883 | (5) Written procedures for compliance and enforcement, including a progressive
1884 | compliance and enforcement strategy, where appropriate; and

1885 | (6) The roles and responsibilities of each of the operator/permittee's departments,
1886 | divisions, or subdivisions in implementing the minimum control measure in Section II
1887 | related to construction site stormwater runoff control. If the operator/permittee utilizes
1888 | another entity to implement portions of the MS4 Program Plan, a copy of the written
1889 | agreement must be retained in the MS4 Program Plan. The description of each
1890 | party's the roles and responsibilities, including any written agreements with third
1891 | parties, shall be updated as necessary.

Comment [lgk37]: Comment: Must define levels of compliance and enforcement. Ensure minimal level is sufficiently protective.

1892 | Reference may be made to any listed requirements in this subdivision provided the
1893 | location of where to find the reference material can be found is included and the
1894 | reference material is made available to the public upon request.

1895 | f. Reporting requirements. The operator/permittee shall track regulated land-
1896 | disturbing activities within its jurisdiction and submit the following information in all
1897 | annual reports submitted to the department:

1898 | (1) Total number of regulated land-disturbing activities;

1899 | (2) Total disturbed acreage;

1900 | (3) Total number of inspections performed; and

1901 | (4) A summary of the enforcement actions taken during the reporting period,
1902 | including: violator, type of violation, acres impacted and penalty assessed.

1903 | 5. Post-construction stormwater management in new development and development on
1904 | prior developed lands redevelopment.

1905 | a. The operator shall develop, implement, and enforce procedures to address
1906 | stormwater runoff to the regulated small MS4 from new development and
1907 | redevelopment projects that disturb greater than or equal to one acre or equal to or
1908 | greater than 2,500 square feet in all areas of the jurisdictions designated as subject
1909 | to the Chesapeake Bay Preservation Area Designation and Management

1910 Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including
 1911 projects less than one acre that are part of a larger common plan of development or
 1912 sale, that discharge into the regulated small MS4. The procedures must ensure that
 1913 controls are in place that would prevent or minimize water quality and quantity
 1914 impacts in accordance with this section.

1915 b. The operator shall:

1916 (1) Develop and implement strategies which include a combination of structural
 1917 and/or nonstructural best management practices (BMPs) appropriate for the
 1918 operator's community. Where determined appropriate by the operator, the operator
 1919 shall encourage the use of structural and nonstructural design techniques to create a
 1920 design that has the goal of maintaining or replicating predevelopment runoff
 1921 characteristics and site hydrology;

1922 (2) Use an ordinance, regulation, or other mechanism to address post-construction
 1923 runoff from new development and redevelopment projects to ensure compliance with
 1924 the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of
 1925 Virginia) and attendant regulations, and to the extent allowable under state, tribal or
 1926 local law. Such ordinances and other mechanisms shall be updated as necessary;

1927 (3) Require construction site owners and operators to secure authorization to
 1928 discharge stormwater from construction activities under a VSMP permit for new
 1929 development and redevelopment projects that result in a land disturbance of greater
 1930 than or equal to one acre or equal to or greater than 2,500 square feet in all areas of
 1931 the jurisdictions designated as subject to the Chesapeake Bay Preservation Area
 1932 Designation and Management Regulations adopted pursuant to the Chesapeake
 1933 Bay Preservation Act. Additionally, stormwater discharges from construction activity
 1934 disturbing less than one acre must secure authorization to discharge under a VSMP
 1935 permit if that construction activity is part of a larger common plan of development or
 1936 sale that would disturb one acre or more;

1937 (4) Require adequate long-term operation and maintenance by the owner of
 1938 structural stormwater management facilities through requiring the owner to develop a
 1939 recorded inspection schedule and maintenance agreement to the extent allowable
 1940 under state, tribal or local law or other legal mechanism. The operator shall
 1941 additionally develop, through the maintenance agreement or other method, a
 1942 mechanism for enforcement of maintenance responsibilities by the operator if they
 1943 are neglected by the owner;

1944 (5) Conduct site inspection and enforcement measures consistent with the Virginia
 1945 Stormwater Management Act and attendant regulations; and

1946 (6) Track all known permanent stormwater management facilities that discharge to
 1947 the regulated small MS4 and submit the following information in accordance with
 1948 Section II-E-3:

1949 (a) Type of structural stormwater management facility installed as defined in the
 1950 Virginia Stormwater Management Handbook;

1951 (b) Geographic location (HUC);

1952 (c) Where applicable, the impaired surface water that the stormwater management
 1953 facility is discharging into; and

1954 (d) Number of acres treated.

1955 a. Applicable oversight requirements. The operator/permittee shall address post-
 1956 construction stormwater runoff that enters the MS4 from the following land-disturbing
 1957 activities:

1958 (1) New development and development on prior developed lands that are defined as
1959 large construction activities or small construction activities in 4VAC50-60-10;
1960 (2) New development and development on prior developed lands that disturb greater
1961 than or equal to 2,500 square feet, but less than one acre, located in a Chesapeake
1962 Bay Preservation Area designated by a local government located in Tidewater,
1963 Virginia; and
1964 (3) New development and development on prior developed lands where an
1965 applicable state regulation or local ordinance has designated a more stringent
1966 regulatory size threshold than that identified in subdivision (1) or (2) above.
1967 b. Required design criteria for stormwater runoff controls. The operator/permittee
1968 shall utilize appropriate legal authority, such as ordinances, permits, orders, specific
1969 contract language, and interjurisdictional agreements, to require that activities
1970 identified in Section II B 5 address stormwater runoff in such a manner that
1971 stormwater runoff controls are designed and installed:
1972 (1) In accordance with the appropriate water quality and water quantity design
1973 criteria as required in Part II (4VAC50-60-40 et seq.) of 4VAC50-60;
1974 (2) In accordance with any additional applicable state or local design criteria required
1975 at project initiation; and
1976 (3) Where applicable, in accordance with any department-approved annual
1977 standards and specifications.
1978 Upon board/Board approval of a Virginia Stormwater Management Program authority
1979 (VSMP authority/Authority) as defined in § 10.1-603.2 of the Code of Virginia and
1980 reissuance of the Virginia Stormwater Management Program (VSMP) General Permit
1981 for Discharges of Stormwater from Construction Activities, the operator/permittee
1982 shall require that stormwater management plans are approved by the appropriate
1983 VSMP Authority prior to land disturbance. The expected implementation date of this
1984 requirement is July 1, 2014; as per § 10.1-603.3 M of the Code of Virginia, VSMPs
1985 shall become effective July 1, 2014, unless otherwise specified by the board/the
1986 Board.
1987 c. Inspection, operation, and maintenance verification of stormwater management
1988 facilities.
1989 (1) For stormwater management facilities not owned by the MS4 operator/permittee,
1990 the following conditions apply:
1991 (a) The operator/permittee shall require adequate long-term operation and
1992 maintenance by the owner of the stormwater management facility by requiring the
1993 owner to develop a recorded inspection schedule and maintenance agreement to the
1994 extent allowable under state or local law or other legal mechanism;
1995 (b) The operator/permittee shall implement a schedule designed to inspect all
1996 privately owned stormwater management facilities that discharge into the MS4 at
1997 least once every five years to document that maintenance is being conducted in such
1998 a manner to ensure long-term operation in accordance with the approved designs.
1999 (c) The operator/permittee shall utilize its legal authority for enforcement of
2000 maintenance responsibilities by the operator/permittee if maintenance is neglected by
2001 the owner. The operator/permittee may develop and implement a progressive
2002 compliance and enforcement strategy provided that the strategy is included in the
2003 MS4 Program Plan.
2004 (d) Beginning with the issuance of this state permit, the operator/permittee may utilize
2005 strategies other than maintenance agreements such as periodic inspections.

2006 homeowner outreach and education, and other methods targeted at promoting the
2007 long-term maintenance of stormwater control measures that are designed to treat
2008 stormwater runoff solely from the individual residential lot. Within 12 month of
2009 coverage under this permit, the operator/permittee shall develop and implement these
2010 alternative strategies and include them in the MS4 Program Plan.
2011 (2) For stormwater management facilities owned by the MS4 operator/permittee, the
2012 following conditions apply:
2013 (a) The operator/permittee shall provide for adequate long-term operation and
2014 maintenance of its stormwater management facilities as demonstrated by [xx criteria]
2015 in accordance with written inspection and maintenance procedures included in the
2016 MS4 Program Plan.
2017 (b) The operator/permittee shall inspect these its stormwater management facilities
2018 annually. The operator/permittee may choose to implement an alternative schedule to
2019 inspect these stormwater management facilities based on facility type and expected
2020 maintenance needs provided that the alternative schedule is included in the MS4
2021 Program Plan and the permittee demonstrates that it is as protective of water quality
2022 as annual inspections.
2023 (c) The operator/permittee shall conduct regular maintenance on its stormwater
2024 management facilities as frequently as necessary to ensure compliance with its MS4
2025 Program Plan.
2026 d. MS4 Program Plan requirements. The operator/permittee's MS4 Program Plan
2027 shall be updated in accordance with Table 1 in this section to include:
2028 (1) A list of the applicable legal authorities such as ordinance, state and other
2029 permits, orders, specific contract language, and interjurisdictional agreements to
2030 ensure compliance with the minimum control measure in Section II related to post-
2031 construction stormwater management in new development and development on prior
2032 developed lands;
2033 (2) Written policies and procedures utilized to ensure that stormwater management
2034 facilities are designed and installed in accordance with Section II B 5 b;
2035 (3) Written inspection policies and procedures utilized in conducting inspections;
2036 (4) Written procedures for inspection, compliance and enforcement to ensure
2037 maintenance is conducted on private stormwater facilities to ensure long-term
2038 operation in accordance with approved design;
2039 (5) Written procedures for inspection and maintenance of operator/permittee-owned
2040 stormwater management facilities;
2041 (6) The roles and responsibilities of each of the operator/permittee's departments,
2042 divisions, or subdivisions in implementing the minimum control measure in Section II
2043 related to post-construction stormwater management in new development and
2044 development on prior developed lands. If the operator/permittee utilizes another entity
2045 to implement portions of the MS4 Program Plan, a copy of the written agreement
2046 must be retained in the MS4 Program Plan. Roles and responsibilities shall be
2047 updated as necessary.
2048 e. Stormwater management facility tracking and reporting requirements. The
2049 operator/permittee shall maintain an updated electronic database of all known
2050 operator/permittee-owned and privately-owned stormwater management facilities that
2051 discharge into the MS4. The database shall include the following:
2052 (1) The stormwater management facility type;

2053 (2) A general description of the facility's location, including the address or latitude
 2054 and longitude;

2055 (3) The acres treated by the facility, including total acres, as well as the breakdown
 2056 of pervious and impervious acres;

2057 (4) The date the facility was brought online (MMYYYY). If the date is not known, the
 2058 operator/permittee shall use June 2005 as the date brought online for all previously
 2059 existing stormwater management facilities, and indicate such basis for that date;

2060 (5) The sixth order hydrologic unit code (HUC) in which the stormwater management
 2061 facility and drainage area is located;

2062 (6) The name of any impaired water segments within each HUC listed on the 2012
 2063 CWA § 305(b)/303(d) Water Quality Assessment Integrate Report to which the
 2064 stormwater management facility discharges;

2065 (7) Whether the stormwater management facility is operator/permittee-owned or
 2066 privately-owned;

2067 (8) Whether a maintenance agreement exists if the stormwater management facility
 2068 is privately owned; and

2069 (9) The date of the operator/permittee's most recent last inspection of the stormwater
 2070 management facility.

2071 In addition, the operator/permittee shall annually track and report the total number of
 2072 inspections completed and, when applicable, the number of enforcement actions
 2073 taken to ensure long-term maintenance.

2074 The operator/permittee shall submit an electronic database or spreadsheet of all
 2075 stormwater management facilities brought online during each reporting year together
 2076 shall be submitted with the appropriate annual report. Until upon such time as the
 2077 department provides the operator/permittees access to a statewide web-based
 2078 reporting database, the operator/permittee shall utilize such database to complete the
 2079 pertinent reporting requirements of this state permit.

2080 6. Pollution prevention/good housekeeping for municipal operations. Develop and
 2081 implement an operation and maintenance program consistent with the MS4 Program
 2082 Plan that includes a training component and has the ultimate goal of preventing or
 2083 reducing pollutant runoff from municipal operations. Using training materials including
 2084 those available from EPA, state, tribe, or other organizations, the program shall include
 2085 employee training to prevent and reduce stormwater pollution from activities such as
 2086 park and open space maintenance, fleet and building maintenance, new construction
 2087 and land disturbances, and MS4 maintenance. The operator is encouraged to review the
 2088 Environmental Protection Agency's (EPA's) National Menu of Stormwater Best
 2089 Management Practices for ideas and strategies to incorporate into its program. The
 2090 menu can be accessed at
 2091 <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.

2092 The operator shall identify, implement, evaluate and modify, as necessary, BMPs to
 2093 meet the following pollution prevention/good housekeeping for municipal operations
 2094 measurable goals:

2095 a. Operation and maintenance programs including activities, schedules, and
 2096 inspection procedures shall include provisions and controls to reduce pollutant
 2097 discharges into the regulated small MS4 and receiving surface waters;

2098 b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance
 2099 shops, outdoor storage areas, rest areas, waste transfer stations, and other
 2100 municipal facilities;

2101 e. Waste materials shall be disposed of properly;

2102 d. Materials that are soluble or erodible shall be protected from exposure to

2103 precipitation;

2104 e. Materials, including but not limited to fertilizers and pesticides, that have the

2105 potential to pollute receiving surface waters shall be applied according to

2106 manufacturer's recommendations; and

2107 f. For state agencies with lands where nutrients are applied, nutrient management

2108 plans shall be developed and implemented in accordance with the requirements of §

2109 10.1-104.4 of the Code of Virginia.

2110 a. Operations and maintenance activities. The MS4 Program Plan submitted with the

2111 registration statement shall be implemented by the operator/permittee until updated in

2112 accordance with this state permit. In accordance with Table 1 in this section, the

2113 operator/permittee shall develop and implement written procedures designed to

2114 minimize or prevent pollutant discharge from: (i) daily operations such as road,

2115 street, and parking lot maintenance; (ii) equipment maintenance; and (iii) the

2116 application, storage, transport, and disposal of pesticides, herbicides, and fertilizers.

2117 The written procedures shall be utilized, as appropriate, as part of the employee

2118 training. At a minimum, the written procedures shall be designed to:

2119 (1) Prevent illicit discharges;

2120 (2) Ensure the proper disposal of water materials, including landscape wastes;

2121 (3) Prevent the discharge of municipal vehicle wash water into the MS4 without

2122 authorization under a separate VPDES permit;

2123 (4) Prevent the discharge of wastewater into the MS4 without authorization under a

2124 separate VPDES/VPDES permit;

2125 (5) Require implementation of best management practices when discharging water

2126 pumped from utility construction and maintenance activities;

2127 (6) Minimize the pollutants in stormwater runoff from bulk storage areas (e.g., salt

2128 storage, topsoil stockpiles) through the use of best management practices;

2129 (7) Prevent pollutant discharge into the MS4 from leaking municipal automobiles and

2130 equipment; and

2131 (8) Ensure that the application of materials, including fertilizers and pesticides, is

2132 conducted in accordance with the manufacturer's recommendations.

2133 b. Municipal facility pollution prevention and good housekeeping.

2134 (1) Within 12 months of state permit coverage under this permit, the

2135 operator/permittee shall identify all municipal high-priority facilities. These high-priority

2136 facilities shall include, at a minimum but not be limited to: (i) composting facilities, (ii)

2137 equipment storage and maintenance facilities, (iii) materials storage yards, (iv)

2138 pesticide storage facilities, (v) public works yards, (vi) recycling facilities, (vii) salt

2139 storage facilities, (viii) solid waste handling and transfer facilities, and (viii) vehicle

2140 storage and maintenance yards.

2141 (2) With 12 months of state permit coverage under this permit, the operator shall

2142 identify which of the municipal high-priority facilities have a high potential for of

2143 chemicals or other materials to be discharged in stormwater.

2144 (3) The operator/permittee shall develop and implement specific stormwater pollution

2145 prevention plans for all high-priority facilities identified as having a high potential for

2146 the discharge of chemicals and other materials in stormwater. The operator/permittee

2147 shall complete SWPPP development and implementation shall be completed within

Comment [lgk38]: Comment: Need some sort of quantitative determination.

2148 four two years of coverage under this state permit. Facilities covered under a
 2149 separate VDPDES permit shall adhere to the conditions established in that permit
 2150 and are excluded from this requirement.

2151 (4) Each SWPPP shall include:

2152 (a) A site description that includes a site map identifying all outfalls, direction of
 2153 flows, existing source controls, and receiving water bodies for the MS4;

2154 (b) A discussion and checklist of potential pollutants and pollutant sources;

2155 (c) A discussion of all potential non-stormwater discharges into the MS4;

2156 (d) Written procedures designed to reduce and prevent pollutant discharge into the
 2157 MS4;

2158 (e) A description of the applicable training as required in Section II B 6 c;

2159 (f) Procedures to conduct an annual comprehensive site compliance evaluation;

2160 (g) An inspection and maintenance schedule for site specific source controls. The
 2161 date of each inspection and associated findings and follow-up shall be logged in
 2162 each SWPPP;

2163 (h) The contents of each SWPPP shall be evaluated and modified as necessary to
 2164 accurately reflect as the result of any discharge, release or spill from the high priority
 2165 facility reported in accordance with Section III G herein. For each such discharge,
 2166 release or spill, the SWPPP must include the following information: The date of
 2167 incident, material discharged, released or spilled, and quantity discharged, released
 2168 or spilled, the release, material spilled and the amount of the release must be listed
 2169 in each SWPPP and

2170 (i) A copy of each SWPPP shall be kept at each facility and shall be kept updated
 2171 and utilized as part of staff training required in Section II B 6 d.

2172 c. Turf and landscape nNutrient management.

2173 (1) The operatorpermittee shall implement turf and landscape nutrient management
 2174 plans that have been developed by a certified -nutrient management planner in
 2175 accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated
 2176 by the MS4 operatorpermittee where nutrients are applied to a contiguous area
 2177 greater than one acre. Implementation shall be in accordance with the following
 2178 schedule:

2179 (a) Within 12 months of state permit coverage, the operatorpermittee shall identify all
 2180 applicable lands where nutrients are applied to a contiguous area of more than one
 2181 acre. A latitude and longitude shall be provided for each such piece of land and
 2182 reported in the annual report.

2183 (b) Within 60 months of state permit coverage, the operatorpermittee shall implement
 2184 nutrient management turf and landscape nutrient management plans on all lands
 2185 where nutrients are applied to a contiguous area of more than one acre. The
 2186 following measurable goals—outcomes are established—required for the
 2187 implementation of turf and landscape nutrient management plans: (i) within 24
 2188 months of permit coverage, not less than 15% of all identified acres will be covered
 2189 by nutrient management turf and landscape nutrient management plans; (ii) within 36
 2190 months of permit coverage, not less than 40% of all identified acres will be covered
 2191 by nutrient management turf and landscape nutrient management plans; and (iii)
 2192 within 48 months of permit coverage, not less than 75% of all identified acres will be
 2193 covered by nutrient management turf and landscape nutrient management plans.

Comment [KWA39]: Comment: Edited for clarity

2194 The operator/permittee shall not fail to meet the measurable goals during at least for
 2195 two consecutive years of this permit cycle.

2196 (c) MS4 operator/permittees with lands regulated under § 10.1-104.4 of the Code of
 2197 Virginia shall continue to implement turf and landscape nutrient management plans
 2198 in accordance with this statutory requirement.

2199 (2) Operator/Permittees shall annually track and report [?] the following:

2200 (a) The total acreage of lands where nutrient management turf and landscape
 2201 nutrient management plans are required; and

2202 (b) The acreage of lands upon which turf and landscape nutrient management plans
 2203 have been implemented.

2204 (c) The total acreage of turf and landscaping where nutrient management plans are
 2205 required;

2206 (d) Annual nitrogen and phosphorus fertilization rates, if any, and/or other practices
 2207 required under turf and landscape nutrient management plan;

2208 (e) Start and end dates for turf and landscape nutrient management plan;

2209 (f) Name, contact information and locator data for the owner, applicator and nutrient
 2210 management planner; and

2211 (g) Whether turf is classified as high or low risk of nutrient export or is unfertilized;

2212 (3) The operator/permittee shall not apply any deicing agent containing urea or other
 2213 forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks, or other
 2214 paved surfaces.

2215 d. Training. The operator/permittee shall conduct training for employees. The training
 2216 requirements may be fulfilled, in total or in part, through regional training programs
 2217 involving two or more MS4 localities provided; however, that each operator/permittee
 2218 shall remain individually liable for its failure to comply with the training requirements
 2219 in this permit. Training is not required if the topic is not applicable to the
 2220 operator/permittee's operations and therefore does not have applicable relevant
 2221 personnel provided the lack of applicability is documented in the MS4 Program Plan.
 2222 The operator/permittee shall determine and document the relevant/applicable
 2223 employees to receive each type of training. The operator/permittee shall develop an
 2224 annual written training plan including a schedule of training events that ensures
 2225 implementation of the training requirements as follows:

2226 (1) The operator/permittee shall provide biennial training to relevant/applicable field
 2227 personnel in the recognition and reporting of illicit discharges.

2228 (2) The operator/permittee shall provide biennial training to relevant/applicable
 2229 employees in good housekeeping and pollution prevention practices that are to be
 2230 employed during road, street, and parking lot maintenance.

2231 (3) The operator/permittee shall provide biennial training to relevant/applicable
 2232 employees in good housekeeping and pollution prevention practices that are to be
 2233 employed in and around maintenance and public works facilities.

2234 (4) The operator/permittee shall ensure that employees, and require that contractors,
 2235 who applying pesticides and herbicides are properly trained or certified in
 2236 accordance with the Virginian Pesticide Control Act (§ 3.1-249.27 et seq. of the Code
 2237 of Virginia).

2238 (5) The operator/permittee shall ensure that employees and contractors serving
 2239 employed as plan reviewers, inspectors, program administrators, and construction

Comment [KWA401]: Comment: Recommend additional bullets based on recommendations of Chesapeake Bay Program Urban Nutrient Management expert panel that are being reviewed by CBP Stormwater, Agriculture and Watershed Technical Workgroups

2240 site operators obtain the appropriate certifications as required under the Virginia
 2241 Erosion and Sediment Control Law and its attendant regulations.

2242 (6) The operatorpermittee shall ensure that the-relevant employees obtain the
 2243 appropriate certifications as required under the Virginia Erosion and Sediment
 2244 Control Law and its attendant regulations.

2245 (7) The operatorpermittees shall provide biennial training to relevantapplicable
 2246 appropriate employees in good housekeeping and pollution prevention practices that
 2247 are to be employed in and around recreational facilities.

2248 (8) The operatorpermittee shall ensure that relevantapplicable appropriate
 2249 employees have training in emergency response, including spill response.
 2250 employees shall have training in spill responses. A summary of the training or
 2251 certification program provided to emergency response employees shall be included
 2252 in the first annual report.

2253 (9) For a period of three years following each training event, tThe operatorpermittee
 2254 shall keep documentation on each such training event, including the training date,
 2255 the number of employees attending the training, and the objective of the training
 2256 event. for a period of three years after each training event.

2257 e. The operatorpermittee shall require that municipal contractors use appropriate
 2258 protective -control measures and procedures for stormwater discharges to the MS4
 2259 system. Oversight procedures shall be described in the MS4 Program Plan.

2260 f. In accordance with the schedule of development in Table 1 of this section, the MS4
 2261 Program Plan shall contain:

2262 (1) The written protocols being used to satisfy the daily operations and maintenance
 2263 requirements;

2264 (2) A list of all municipal high-priority facilities that denotes-identifies those facilities
 2265 that have a high potential of chemicals or other materials to be discharged in
 2266 stormwater and a schedule that identifies the year in which an individual SWPPP will
 2267 be developed for those facilities required to have a SWPPP. Upon completion of a
 2268 SWPPP, the SWPPP shall be part of the MS4 Program Plan. The MS4 Program
 2269 Plan shall include the location in which the individual SWPPP is located;

2270 (3) A list of lands where nutrients are applied to a contiguous area of more than one
 2271 acre. Upon completion of a turf and landscape nutrient management plan, the turf
 2272 and landscape nutrient management plan shall be part of the MS4 Program Plan.
 2273 The MS4 Program Plan shall include the location in which the individual nutrient
 2274 management turf and landscape nutrient management plan is located; and

2275 (4) The annual written training plan for the next reporting cycle.

2276 g. Reporting requirements for Training Control Measure.

2277 (1) A summary report on the development and implementation of the daily
 2278 operational procedures;

2279 (2) A summary report on the development and implementation of the required
 2280 SWPPPs;

2281 (3) A summary report on the development and implementation of the nutrient
 2282 management turf and landscape nutrient management plans that includes:

2283 (a) The total acreage of lands where nutrient-management turf and landscape
 2284 nutrient management plans are required; and

2285 (b) The acreage of lands upon which nutrient-management turf and landscape
 2286 nutrient management plans have been implemented; and

(4) A summary report on the required training, including a list of training events, the training date, the number of employees attending training and the objective of the training.

C. If an existing program requires the implementation of one or more of the minimum control measures of Section II B, the operator~~permittee~~, with the approval of ~~the board~~the Board, may follow that program's requirements rather than the requirements of Section II B. ~~A program that may be considered includes, but is not limited to, a local, state or tribal program that imposes, at a minimum, the relevant requirements of Section II B.~~

The operator~~permittee~~'s MS4 Program Plan shall identify and fully describe any program that will be used to satisfy one or more of the minimum control measures of Section II B.

If the program the operator~~permittee~~ is using requires the approval of a third party, the program must be fully approved by the third party, ~~or the operator must be working towards getting full approval. Documentation of the program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 3. The operator~~permittee~~ remains responsible for compliance with the permit requirements if the other entity fails to implement the control measures (or component thereof.)~~

D. The operator~~permittee~~ may rely on another entity to satisfy the state permit obligations requirements to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the operator~~permittee~~. The agreement between the parties must be documented in writing and retained by the operator~~permittee~~ with the MS4 Program Plan for the duration of this state permit.

In the annual reports that must be submitted under Section II E 3, the operator~~permittee~~ must specify that another entity is being relied on to satisfy some of the state permit obligations requirements.

If the operator~~permittee~~ is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Section II E 3, the operator~~permittee~~ must note that fact in the registration statement, but is not required to file the periodic reports.

The operator~~permittee~~ remains fully responsible for compliance with all the state permit obligations requirements regardless of whether if the other entity fails to implements any the control measure (or component thereof).

E. Evaluation and assessment.

1. MS4 Program Evaluation. The operator~~permittee~~ must annually evaluate:

a. The operator must annually evaluate:

(1) a. Program compliance;

(2) b. The appropriateness of the identified BMPs (as part of this evaluation, the operator~~permittee~~ shall evaluate the effectiveness of BMPs in addressing discharges into waters that are identified as impaired in the 2006 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report); and

(3) c. Progress towards achieving the identified measurable goalsoutcomes. Any methods or tools for calculating outcomes must be reviewed and accepted by the Department and be consistent with tools used to establish any TMDL(s).

b. The operator must evaluate its MS4 Program once during the permit cycle using the "Municipal Stormwater Program Evaluation Guidance," Environmental Protection Agency EPA-833-R-07-003. Such information shall be utilized when reapplying for

2334 permit coverage. Results of this evaluation shall be kept on file and made available
 2335 during audits and inspections.

2336 2. Recordkeeping. The operator~~permittee~~ must keep records required by the state permit
 2337 for at least three years. These records must be submitted to the NPDES-permitting
 2338 authority ~~department~~ only upon specific request. The operator~~permittee~~ must make the
 2339 records, including a description of the stormwater management program, available to the
 2340 public at reasonable times during regular business hours.

2341 3. Annual reports. The operator~~permittee~~ must submit an annual report for the reporting
 2342 period of July 1 through the following June 30 to the department by ~~the following October~~
 2343 1 of that year. The reports shall include:

2344 a. Background Information.

2345 (1) The name and state permit number of the program submitting the annual report;

2346 (2) The annual report permit year;

2347 (3) Modifications to any operator~~permittee~~'s department's roles and responsibilities;

2348 (4) Number of new MS4 outfalls and associated acreage by HUC added during the
 2349 permit year; and

2350 (5) Signed certification.

2351 b. The status of compliance with state permit conditions, an assessment of the
 2352 appropriateness of the identified best management practices and progress towards
 2353 achieving the identified measurable goals for each of the minimum control measures;

2354 c. Results of information collected and analyzed, including monitoring data, if any,
 2355 during the reporting period;

2356 d. A summary of the stormwater activities the operator~~permittee~~ plans to undertake
 2357 during the next reporting cycle;

2358 e. A change in any identified best management practices or measurable goals for
 2359 any of the minimum control measures including steps to be taken to address any
 2360 deficiencies;

2361 f. Notice that the operator~~permittee~~ is relying on another government entity to satisfy
 2362 some of the state permit obligations (if applicable);

2363 g. The approval status of any programs pursuant to Section II C (if appropriate), or
 2364 the progress towards achieving full approval of these programs; and

2365 h. Information required pursuant to Section I B-9; for any applicable TMDL special
 2366 condition.

2367 i. Evaluation

2368 i. ~~The number of illicit discharges identified and the narrative on how they were~~
 2369 ~~controlled or eliminated pursuant to Section II B-3 f;~~

2370 j. ~~Regulated land disturbing activities data tracked under Section II 4 c;~~

2371 k. ~~All known permanent stormwater management facility data tracked under Section~~
 2372 ~~II B-5 b (6) submitted in a database format to be prescribed by the department. Upon~~
 2373 ~~filing of this list, subsequent reports shall only include those new stormwater~~
 2374 ~~management facilities that have been brought online;~~

2375 l. ~~A list of any new or terminated signed agreements between the operator and any~~
 2376 ~~applicable third parties where the operator has entered into an agreement in order to~~
 2377 ~~implement minimum control measures or portions of minimum control measures; and~~

2378 m. ~~Copies of any written comments received during a public comment period~~
 2379 ~~regarding the MS4 Program Plan or any modifications.~~

2380 F. Program Plan modifications. ~~The board~~The Board may require modifications to the MS4
2381 Program Plan as needed to address adverse impacts on receiving surface water quality caused,
2382 or contributed to, by discharges from the regulated small MS4. Modifications required by the
2383 ~~board~~the Board shall be made in writing and set forth the time schedule to develop and
2384 implement the modification. The operator may propose alternative program modifications and
2385 time schedules to meet the objective of the required modification. ~~The board~~The Board retains
2386 the authority to require any modifications it determines are necessary.

2387 1. Program Modifications requested by the operator/permittee. Modifications to the MS4
2388 Program are expected throughout the life of this state permit as part of the iterative
2389 process to reduce the pollutant loadings and to protect water quality. As such,
2390 modifications made in accordance with this state permit as a result of the iterative
2391 process do not require modification of this permit unless the department determines that
2392 the changes meet the criteria referenced in 4VAC50-60-630 or 4VAC50-60-650.
2393 Updates and modifications to the MS4 Program may be made during the life of this state
2394 permit in accordance with the following procedures:

2395 a. Additional (but not eliminating or replacing) components, controls, or
2396 requirements to the MS4 Program may be made by the operator/permittee at any
2397 time. Additions shall be reported as part of the annual report.

2398 b. Updates and modifications to specific standards and specifications, schedules,
2399 operating procedures, ordinances, manuals, checklists, and other documents
2400 routinely evaluated and modified are permitted under this state permit provided that
2401 the updates and modifications are done in a manner that (i) is consistent with the
2402 conditions of this state permit, (ii) follow any public notice and participation
2403 requirements established in this state permit, and (iii) are documented in the annual
2404 report.

2405 c. Replacing, or eliminating without replacement, any ineffective or infeasible
2406 strategies, policies, and BMPs specifically identified in this permit with alternate
2407 strategies, policies, and BMPs may be requested at any time. Such requests are
2408 subject to the modification procedures contained in 40 CFR 122.62 and 122.63
2409 regarding modifications and minor modifications, respectively, and must include the
2410 following:

2411 (1) An analysis of how or why the BMPs, strategies, or policies are ineffective or
2412 infeasible, including cost prohibitive;

2413 (2) Expectations on the effectiveness of the replacement BMPs, strategies, or
2414 policies;

2415 (3) An analysis of how the replacement BMPs are expected to achieve the goals of
2416 the BMP's to be replaced;

2417 (4) A schedule for implementing the replacement BMPs, strategies, and policies;

2418 (5) An analysis of how the replacement strategies and policies are expected to
2419 improve the operator/permittee's ability to meet the goals of the strategies and
2420 policies being replaced; and

2421 (6) Requests or notifications must be made in writing to the department and signed in
2422 accordance with 4VAC-50-60-370.

2423 d. The operator/permittee follows the public involvement requirements identified in
2424 Section II B 2 (a).

2425 2. MS4 Program updates requested by the department. In a manner and following
2426 procedures in accordance with the Virginia Administrative Process Act, the Virginia
2427 Stormwater Management regulations, and other applicable state law and regulations, the

2428 department may request changes to the MS4 Program to assure compliance with the
2429 statutory requirements of the Virginia Stormwater Management Act and its attendant
2430 regulations to:

- 2431 a. Address impacts on receiving water quality caused by discharges from the MS4;
2432 b. Include more stringent requirements necessary to comply with new state or federal
2433 laws or regulations; or
2434 c. Include such other conditions necessary to comply with state or federal law or
2435 regulation.

2436 Proposed changes requested by the department shall be made in writing and set forth
2437 the basis for and objective of the modification as well as the proposed time schedule for
2438 the operator/permittee to develop and implement the modification. The operator/permittee
2439 may propose alternative program modifications or time schedules to meet the objective
2440 of the requested modification, but any such modifications are at the discretion of the
2441 department.

2442
2443 SECTION III
2444 CONDITIONS APPLICABLE TO ALL STATE PERMITS

2445 A. Monitoring.

- 2446 1. Samples and measurements taken for the purpose of monitoring shall be
2447 representative of the monitored activity.
2448 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part
2449 136 (2001) or alternative methods approved by the U.S. Environmental Protection
2450 Agency, unless other procedures have been specified in this state permit.
2451 3. The operator/permittee shall periodically calibrate and perform maintenance
2452 procedures on all monitoring and analytical instrumentation at intervals that will insure
2453 accuracy of measurements.

2454 B. Records.

- 2455 1. Monitoring records/reports shall include:
2456 a. The date, exact place, and time of sampling or measurements;
2457 b. The individual(s) who performed the sampling or measurements;
2458 c. The date(s) and time(s) analyses were performed;
2459 d. The individual(s) who performed the analyses;
2460 e. The analytical techniques or methods used; and
2461 f. The results of such analyses.
2462 2. The operator/permittee shall retain records of all monitoring information, including all
2463 calibration and maintenance records and all original strip chart recordings for continuous
2464 monitoring instrumentation, copies of all reports required by this state permit, and
2465 records of all data used to complete the registration statement for this state permit, for a
2466 period of at least three years from the date of the sample, measurement, report or
2467 request for coverage. This period of retention shall be extended automatically during the
2468 course of any unresolved litigation regarding the regulated activity or regarding control
2469 standards applicable to the operator/permittee, or as requested by the board/the Board.

2470 C. Reporting monitoring results.

- 2471 1. The operator/permittee shall submit the results of the monitoring required by this state
2472 permit with the annual report unless another reporting schedule is specified elsewhere in
2473 this state permit.

2474 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR); on
 2475 forms provided, approved or specified by the department; or in any format provided the
 2476 date, location, parameter, method, and result of the monitoring activity are included.

2477 3. If the ~~operator~~permittee monitors any pollutant specifically addressed by this state
 2478 permit more frequently than required by this state permit using test procedures approved
 2479 under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S.
 2480 Environmental Protection Agency or using procedures specified in this state permit, the
 2481 results of this monitoring shall be included in the calculation and reporting of the data
 2482 submitted in the DMR or reporting form specified by the department.

2483 4. Calculations for all limitations that require averaging of measurements shall utilize an
 2484 arithmetic mean unless otherwise specified in this state permit.

2485 D. Duty to provide information. The ~~operator~~permittee shall furnish to the department, within
 2486 a reasonable time, any information that ~~the board~~the Board may request to determine whether
 2487 cause exists for modifying, revoking and reissuing, or terminating this state permit or to
 2488 determine compliance with this state permit. ~~The board~~The Board may require the
 2489 ~~operator~~permittee to furnish, upon request, such plans, specifications, and other pertinent
 2490 information as may be necessary to determine the effect of the wastes from his discharge on
 2491 the quality of surface waters, or such other information as may be necessary to accomplish the
 2492 purposes of the CWA and Virginia Stormwater Management Act. The ~~operator~~permittee shall
 2493 also furnish to the department upon request, copies of records required to be kept by this
 2494 permit.

2495 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any
 2496 progress reports on, interim and final requirements contained in any compliance schedule of this
 2497 state permit shall be submitted no later than 14 days following each schedule date.

2498 F. Unauthorized stormwater discharges. Pursuant to § 10.1-603.2:2 A of the Code of
 2499 Virginia, except in compliance with a state permit issued by ~~the board~~the Board, it shall be
 2500 unlawful to cause a stormwater discharge from a MS4.

2501 G. Reports of unauthorized discharges. Any operator of a regulated small MS4 who
 2502 discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any
 2503 noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in
 2504 excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part
 2505 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon surface
 2506 waters; or who discharges or causes or allows a discharge that may reasonably be expected to
 2507 enter surface waters, shall notify the Department of Environmental Quality of the discharge
 2508 immediately upon discovery of the discharge, but in no case later than within 24 hours after said
 2509 discovery. A written report of the unauthorized discharge shall be submitted to the Department
 2510 of Environmental Quality and the Department of Conservation and Recreation, within five days
 2511 of discovery of the discharge. The written report shall contain:

2512 1. A description of the nature and location of the discharge;
 2513 2. The cause of the discharge;
 2514 3. The date on which the discharge occurred;
 2515 4. The length of time that the discharge continued;
 2516 5. The volume of the discharge;
 2517 6. If the discharge is continuing, how long it is expected to continue;
 2518 7. If the discharge is continuing, what the expected total volume of the discharge will be;
 2519 and

2520 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the
2521 present discharge or any future discharges not authorized by this state permit.

2522 Discharges reportable to the Department of Environmental Quality and the Department of
2523 Conservation and Recreation under the immediate reporting requirements of other regulations
2524 are exempted from this requirement.

2525 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge
2526 including a "bypass" or "upset," as defined herein, should occur from a facility and the
2527 discharge enters or could be expected to enter surface waters, the ~~operator~~ permittee shall
2528 promptly notify, in no case later than within 24 hours, the Department of Environmental Quality
2529 and the Department of Conservation and Recreation by telephone after the discovery of the
2530 discharge. This notification shall provide all available details of the incident, including any
2531 adverse effects on aquatic life and the known number of fish killed. The ~~operator~~ permittee shall
2532 reduce the report to writing and shall submit it to the Department of Environmental Quality and
2533 the Department of Conservation and Recreation within five days of discovery of the discharge in
2534 accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited
2535 to any discharge resulting from:

2536 1. Unusual spillage of materials resulting directly or indirectly from processing
2537 operations;

2538 2. Breakdown of processing or accessory equipment;

2539 3. Failure or taking out of service some or all of the facilities; and

2540 4. Flooding or other acts of nature.

2541 I. Reports of noncompliance. The ~~operator~~ permittee shall report any noncompliance which
2542 may adversely affect surface waters or may endanger public health.

2543 1. An oral report shall be provided within 24 hours to the Department of Environmental
2544 Quality and the Department of Conservation and Recreation from the time the
2545 ~~operator~~ permittee becomes aware of the circumstances. The following shall be included
2546 as information which shall be reported within 24 hours under this paragraph:

2547 a. Any unanticipated bypass; and

2548 b. Any upset which causes a discharge to surface waters.

2549 2. A written report shall be submitted within five days and shall contain:

2550 a. A description of the noncompliance and its cause;

2551 b. The period of noncompliance, including exact dates and times, and if the
2552 noncompliance has not been corrected, the anticipated time it is expected to
2553 continue; and

2554 c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the
2555 noncompliance.

2556 ~~The board~~ The Board or its designee may waive the written report on a case-by-case
2557 basis for reports of noncompliance under Section III I if the oral report has been
2558 received within 24 hours and no adverse impact on surface waters has been
2559 reported.

2560 3. The ~~operator~~ permittee shall report all instances of noncompliance not reported under
2561 Sections III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The
2562 reports shall contain the information listed in Section III I 2.

2563 NOTE: The immediate (within 24 hours) reports required to be provided to the
2564 Department of Environmental Quality in Sections III G, H and I may be made to the
2565 appropriate Department of Environmental Quality's Regional Office Pollution Response
2566 Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>. Reports may be

made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator/permittee becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator/permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The operator/permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The operator/permittee plans alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

2. The operator/permittee shall give advance notice to the department of any planned changes in the permitted facility or activity; which may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

2614 (2) A senior executive officer having responsibility for the overall operations of a
2615 principal geographic unit of the agency.

2616 2. Reports, etc. All reports required by state permits, and other information requested by
2617 the ~~board~~the Board shall be signed by a person described in Section III K 1, or by a duly
2618 authorized representative of that person. A person is a duly authorized representative
2619 only if:

2620 a. The authorization is made in writing by a person described in Section III K 1;
2621 b. The authorization specifies either an individual or a position having responsibility
2622 for the overall operation of the regulated facility or activity such as the position of
2623 plant manager, operator of a well or a well field, superintendent, position of
2624 equivalent responsibility, or an individual or position having overall responsibility for
2625 environmental matters for the ~~operator~~permittee. (A duly authorized representative
2626 may thus be either a named individual or any individual occupying a named
2627 position.); and
2628 c. The written authorization is submitted to the department.

2629 3. Changes to authorization. If an authorization under Section III K 2 is no longer
2630 accurate because a different individual or position has responsibility for the overall
2631 operation of the facility, a new authorization satisfying the requirements of Section III K 2
2632 shall be submitted to the department prior to or together with any reports, or information
2633 to be signed by an authorized representative.

2634 4. Certification. Any person signing a document under Sections III K 1 or 2 shall make
2635 the following certification:

2636 "I certify under penalty of law that this document and all attachments were prepared
2637 under my direction or supervision in accordance with a system designed to assure that
2638 qualified personnel properly gather and evaluate the information submitted. Based on
2639 my inquiry of the person or persons who manage the system, or those persons directly
2640 responsible for gathering the information, the information submitted is, to the best of my
2641 knowledge and belief, true, accurate, and complete. I am aware that there are significant
2642 penalties for submitting false information, including the possibility of fine and
2643 imprisonment for knowing violations."

2644 L. Duty to comply. The ~~operator~~permittee shall comply with all conditions of this state permit.
2645 Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management
2646 Act and the Clean Water Act, except that noncompliance with certain provisions of this state
2647 permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean
2648 Water Act. State permit noncompliance is grounds for enforcement action; for state permit
2649 termination, revocation and reissuance, or modification; or denial of a state permit renewal
2650 application.

2651 The ~~operator~~permittee shall comply with effluent standards or prohibitions established under
2652 § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations
2653 that establish these standards or prohibitions or standards for sewage sludge use or disposal,
2654 even if this state permit has not yet been modified to incorporate the requirement.

2655 M. Duty to reapply. If the ~~operator~~permittee wishes to continue an activity regulated by this
2656 state permit after the expiration date of this state permit, the ~~operator~~permittee shall submit a
2657 new registration statement at least 90 days before the expiration date of the existing state
2658 permit, unless permission for a later date has been granted by the ~~board~~the Board. The
2659 ~~board~~the Board shall not grant permission for registration statements to be submitted later than
2660 the expiration date of the existing state permit.

2661 N. Effect of a state permit. This state permit does not convey any property rights in either
2662 real or personal property or any exclusive privileges, nor does it authorize any injury to private
2663 property or invasion of personal rights, or any infringement of federal, state or local law or
2664 regulations.

2665 O. State law. Nothing in this state permit shall be construed to preclude the institution of any
2666 legal action under, or relieve the operator/permittee from any responsibilities, liabilities, or
2667 penalties established pursuant to any other state law or regulation or under authority preserved
2668 by § 510 of the Clean Water Act. Except as provided in state permit conditions on "bypassing"
2669 (Section III U), and "upset" (Section III V) nothing in this state permit shall be construed to
2670 relieve the operator/permittee from civil and criminal penalties for noncompliance.

2671 P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to
2672 preclude the institution of any legal action or relieve the operator/permittee from any
2673 responsibilities, liabilities, or penalties to which the operator/permittee is or may be subject under
2674 §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean
2675 Water Act.

2676 Q. Proper operation and maintenance. The operator/permittee shall at all times properly
2677 operate and maintain all facilities and systems of treatment and control (and related
2678 appurtenances), which are installed or used by the operator/permittee to achieve compliance
2679 with the conditions of this state permit. Proper operation and maintenance also includes
2680 effective plant performance, adequate funding, adequate staffing, and adequate laboratory and
2681 process controls, including appropriate quality assurance procedures. This provision requires
2682 the operation of back-up or auxiliary facilities or similar systems, which are installed by the
2683 operator/permittee only when the operation is necessary to achieve compliance with the
2684 conditions of this state permit.

2685 R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of
2686 treatment or management of pollutants shall be disposed of in a manner so as to prevent any
2687 pollutant from such materials from entering surface waters.

2688 S. Duty to mitigate. The operator/permittee shall take all reasonable steps to minimize or
2689 prevent any discharge in violation of this state permit that has a reasonable likelihood of
2690 adversely affecting human health or the environment.

2691 T. Need to halt or reduce activity not a defense. It shall not be a defense for an
2692 operator/permittee in an enforcement action that it would have been necessary to halt or reduce
2693 the permitted activity in order to maintain compliance with the conditions of this state permit.

2694 U. Bypass.

2695 1. "Bypass," as defined in 4VAC50-60-10, means the intentional diversion of waste
2696 streams from any portion of a treatment facility. The operator/permittee may allow any
2697 bypass to occur that does not cause effluent limitations to be exceeded, but only if it also
2698 is for essential maintenance to assure efficient operation. These bypasses are not
2699 subject to the provisions of Sections III U 2 and U 3.

2700 2. Notice.

2701 a. Anticipated bypass. If the operator/permittee knows in advance of the need for a
2702 bypass, prior notice shall be submitted, if possible at least 10 days before the date of
2703 the bypass.

2704 b. Unanticipated bypass. The operator/permittee shall submit notice of an
2705 unanticipated bypass as required in Section III I.

2706 3. Prohibition of bypass.

2707 a. Bypass is prohibited, and ~~the board~~ the Board or its designee may take
2708 enforcement action against an operator/permittee for bypass, unless:

2709 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe
 2710 property damage;
 2711 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
 2712 treatment facilities, retention of untreated wastes, or maintenance during normal
 2713 periods of equipment downtime. This condition is not satisfied if adequate back-up
 2714 equipment should have been installed in the exercise of reasonable engineering
 2715 judgment to prevent a bypass that occurred during normal periods of equipment
 2716 downtime or preventive maintenance; and
 2717 (3) The ~~operator~~operator submitted notices as required under Section III U 2.
 2718 b. ~~The board~~The Board or its designee may approve an anticipated bypass, after
 2719 considering its adverse effects, if ~~the board~~the Board or its designee determines that
 2720 it will meet the three conditions listed above in Section III U 3 a.

2721 V. Upset.

2722 1. An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action
 2723 brought for noncompliance with technology based state permit effluent limitations if the
 2724 requirements of Section III V 2 are met. A determination made during administrative
 2725 review of claims that noncompliance was caused by upset, and before an action for
 2726 noncompliance, is not a final administrative action subject to judicial review.
 2727 2. An upset does not include noncompliance to the extent caused by operational error,
 2728 improperly designed treatment facilities, inadequate treatment facilities, lack of
 2729 preventive maintenance, or careless or improper operation.
 2730 3. An ~~operator~~operator who wishes to establish the affirmative defense of upset shall
 2731 demonstrate, through properly signed, contemporaneous operating logs, or other
 2732 relevant evidence that:
 2733 a. An upset occurred and that the ~~operator~~operator can identify the cause(s) of the
 2734 upset;
 2735 b. The permitted facility was at the time being properly operated;
 2736 c. The ~~operator~~operator submitted notice of the upset as required in Section III I;
 2737 and
 2738 d. The ~~operator~~operator complied with any remedial measures required under
 2739 Section III S.
 2740 4. In any enforcement proceeding the ~~operator~~operator seeking to establish the
 2741 occurrence of an upset has the burden of proof.

2742 W. Inspection and entry. The ~~operator~~operator shall allow the department as ~~the board~~the
 2743 Board's designee, or an authorized representative (including an authorized contractor acting as
 2744 a representative of the administrator), upon presentation of credentials and other documents as
 2745 may be required by law, to:

2746 1. Enter upon the ~~operator~~operator's premises where a regulated facility or activity is
 2747 located or conducted, or where records must be kept under the conditions of this state
 2748 permit;
 2749 2. Have access to and copy, at reasonable times, any records that must be kept under
 2750 the conditions of this state permit;
 2751 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
 2752 equipment), practices, or operations regulated or required under this state permit; and
 2753 4. Sample or monitor at reasonable times, for the purposes of assuring state permit
 2754 compliance or as otherwise authorized by the Clean Water Act and the Virginia
 2755 Stormwater Management Act, any substances or parameters at any location.

2756 For purposes of this subsection, the time for inspection shall be deemed reasonable
2757 during regular business hours, and whenever the facility is discharging. Nothing
2758 contained herein shall make an inspection unreasonable during an emergency.

2759 X. State permit actions. State permits may be modified, revoked and reissued, or terminated
2760 for cause. The filing of a request by the operator/permittee for a state permit modification,
2761 revocation and reissuance, or termination, or a notification of planned changes or anticipated
2762 noncompliance does not stay any state permit condition.

2763 Y. Transfer of permits.

2764 1. State permits are not transferable to any person except after notice to the department.
2765 Except as provided in Section III Y 2, a state permit may be transferred by the
2766 operator/permittee to a new owner or operator only if the state permit has been modified
2767 or revoked and reissued, or a minor modification made, to identify the new
2768 operator/permittee and incorporate such other requirements as may be necessary under
2769 the Virginia Stormwater Management Act and the Clean Water Act.

2770 2. As an alternative to transfers under Section III Y 1, this state permit may be
2771 automatically transferred to a new operator/permittee if:

2772 a. The current operator/permittee notifies the department at least two days in
2773 advance of the proposed transfer of the title to the facility or property;

2774 b. The notice includes a written agreement between the existing and new
2775 operator/permittees containing a specific date for transfer of state permit
2776 responsibility, coverage, and liability between them; and

2777 c. ~~The board~~ The Board does not notify the existing operator/permittee and the
2778 proposed new operator/permittee of its intent to modify or revoke and reissue the
2779 state permit. If this notice is not received, the transfer is effective on the date
2780 specified in the agreement mentioned in Section III Y 2 b.

2781 Z. Severability. The provisions of this state permit are severable, and if any provision of this
2782 state permit or the application of any provision of this state permit to any circumstance, is held
2783 invalid, the application of such provision to other circumstances, and the remainder of this state
2784 permit, shall not be affected thereby.

2785
2786 FORMS (4VAC50-60)

2787 Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1,
2788 DCR 199-149 (August 1990).

2789 ~~Department of Conservation and Recreation Permit Fee Form, DCR 199-145 (10/09).~~

2790 Department of Conservation and Recreation MS4 Operator Permit Fee Form, DCR 199-145
2791 (10/09) (09/12).

2792 General Permit for Discharges of Stormwater from Construction Activities (VAR10) -
2793 Registration Statement, DCR 199-146 (03/09).

2794 General Permit Notice of Termination - Construction Activity Stormwater Discharges
2795 (VAR10), DCR 199-147 (03/09).

2796 General Permit for Discharges of Stormwater from Construction Activities (VAR10) -
2797 Transfer Agreement, DCR 199-191 (03/09).

2798 ~~VSMP General Permit Registration Statement for Stormwater Discharges From Small~~
2799 ~~Municipal Separate Storm Sewer Systems (VAR04), DCR 199-148 (07/08).~~

2800 VSMP General Permit Registration Statement for Stormwater Discharges From Small
2801 Municipal Separate Storm Sewer Systems (VAR04) and Instructions, DCR 199-148 (09/12).

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DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)

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Illicit Discharge Detection and Elimination—A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at <http://cfpub.epa.gov/npdes/stormwater/ldde.cfm>.

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Getting in Step—A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at <http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf>, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

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Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance, or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

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Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011.

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Other comments:

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- Move list of TMDLs in Fact Sheet to Appendix of regulations

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